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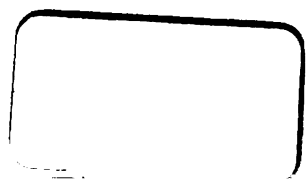
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# AMERICAN STATE TRIALS

*A Collection of the Important and Interesting Criminal Trials which have taken place in the United States, from the beginning of our Government to the Present Day.*

**WITH NOTES AND ANNOTATIONS**

**JOHN D. LAWSON, LL.D.**  
**EDITOR**

**VOLUME XII**

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TO

LIEUTENANT GENERAL ENOCH HERBERT CROWDER, LL.D.

SOLDIER, LAWYER, DIPLOMAT; JUDGE  
ADVOCATE GENERAL AND PROVOST  
MARSHAL GENERAL, U. S. A.

At this moment of the Ratification of the Treaty of Peace and the End of the Great War, I, an old Friend, Dedicate this Volume to You who drafted the Conscription Law; perfected with Accuracy and Speed the Registration of the Manhood of the Land and selected our Conquering Army, to the Satisfaction of the Nation and without Disturbing its economic or social Life. As the Architect of that Law and the Genius of its Execution, your Name will be coupled on History's Page with those of CARNOT and STANTON, the Organizer of the Victory of the Citizen Soldiery of France over all the Monarchs of Europe, and the Creator of the Armies of the Union that Preserved the Republic.



## PREFACE TO VOLUME TWELVE

The indifference of a good-natured people, so busily engaged in money making as scarcely to notice the abuse of speech and the wild denunciations of existing social conditions that were going on under its very eyes, had its certain culmination in the massacre of its guardians and fellow-citizens (*The Chicago Anarchists*, pp. 1-319). But this is not a local failing; it is the mark of the American, as may be illustrated by our historical action in morals, in politics, in what you will. For it is our Nation that has permitted corporations to bribe its legislatures, to secure valuable franchises without paying for them, to steal our highways, to take from the public, for services they pretended to render, whatever they pleased to demand, so as to enrich themselves beyond the dreams of avarice; that has allowed crime to flourish and murderers by the thousand to go unpunished, through the chicanery of disreputable lawyers, the bribery of jurors, and the technicalities of eighteenth-century courts; that looked on and made no sign for three long years while the Hun of the twentieth century was overturning civilization in Europe and killing its own people on the high seas; and that permitted for more than a generation the distillers and brewers and saloonkeepers of the land to dictate the nomination and election of its public officers and to debauch its courts and legislatures. And, then, because of this peculiarity, as Kipling has sung of the American—

“That bids him flout the law he makes,  
That bids him make the law he flouts,  
Till, dazed by many doubts, he wakes  
The drumming guns that have no doubts”—

the Nation proceeds to solve all these problems by the same methods. It declares that corporations shall henceforth have no profits at all in their business; that it shall be run according as it directs, and that their property shall be turned over to the public without compensation. It does nothing to insure a common-sense trial of its criminals, but mobs the jails, hangs guilty and innocent with equal satisfaction, and burns down the temples of justice. It raises a citizen army of millions, spends money by the billion, sends an expedition across the seas such as was never seen in the world's history, sweeps from his throne the most powerful monarch of the age, and dictates the future boundaries of European nations and the future peace of the world. And it not only closes every saloon and prohibits, under the most severe penalties, the manufacture of intoxicating liquors but it robs the distiller and brewer of his lawfully acquired property and denies the innocent citizen the liberty of choosing what he shall drink.

Thus Chicago acted 33 years ago. With a speed unknown before or since to its criminal procedure and to a tribunal that could by no possibility be impartial, the eight men, none of whom had thrown the death-dealing bomb, were put on trial; for all sorts and conditions of men—wage earners as well as capitalists—first horrified at the tragedy, then in terror that the hand of the anarchist might yet reach their own homes, demanded that the prisoners should be sent to the gallows. In such an environment it was clearly impossible to find such a jury as the law contemplated, though the 12 men who were selected were probably as open-minded as could be expected under the existing state of public opinion. But when the judge told them in his legal phraseology that it was not required that they should



find that any of the prisoners threw a bomb or fired a pistol or had any direct hand in the killing, but that one who inflames others' minds and induces them by violent means to accomplish an illegal object is himself liable, though he takes no part in the act, and that it makes no difference whether the mind is affected by inflammatory words addressed to the reader through the newspaper or to the hearer through the spoken words of an orator, it was all over with August Spies and his associates. Such a legal doctrine applied in a Boston court in 1854 would have convicted and hanged two men who today are held entitled to places in the Hall of Fame.<sup>1</sup> The Internationalists of 1886 were working against industrial slavery, the Abolitionists of 1854 against negro slavery. Spies and Parsons persuaded others to oppose with violence the laws of the land; Wendell Phillips and William Lloyd Garrison did exactly the same thing and their advice was followed by their followers in exactly the same way, viz: in the murder of the men charged with the duty of enforcing the law.

It may be that after all is said the end justified the means; it may be that our Government which today seems to be extremely lax in allowing Bolshevism and I. W. W. doctrines to be preached in all parts of the country might well study the result of the Chicago trial. For it is certain that for more than a quarter of a century this great metropolis was not again threatened with destruction from within its walls.

*John Weeks* (pp. 320-326) came near being a victim of a rule of law that calls upon a person found in possession of stolen property to explain how he got it and raises the presumption that he is the thief, the strength of which is, however, in proportion to the shortness of

<sup>1</sup> See *Trial of Anthony Burns*, 5 Am. St. Tr. 645.

the interval which has elapsed. As an English judge once put it to a jury "If I were now to lose my watch and in a few minutes it were to be found on the person of one of you, it would afford the strongest ground for presuming that you had stolen it. But if in a month hence it were to be found in your possession, the presumption of your having stolen it would be greatly weakened, because stolen property usually passes through many hands."<sup>2</sup> Another eminent judge, picking up one day on the highway something lying there, said to a friend who was with him, "Now, if this has been stolen, and I am found with it, I might be charged with the robbery."<sup>3</sup> The jury believed Weeks' story as to how he came by the tumblers, and that was all that was necessary to acquit him.

The prosecution of *Theodore Lyman* (pp. 327-425) by Daniel Webster was an echo of the Napoleonic wars. If there had been no struggle of Napoleon against England and the other European powers, there would have been no Berlin and Milan decrees by Napoleon, no orders in council by George III, and no embargo acts under Thomas Jefferson; there would have been no combination in New England against the embargo acts and Daniel Webster would not have been charged with combining with other leading Federalists to break up the Union on account of them, as was maintained by him to be what the editor meant in the editorial complained of.<sup>4</sup> It was a notable case, not only on account of the high social and political standing of the parties but also because of the political and legal questions raised and discussed. The trial embraced in its scope the political history of the country during the tumult

<sup>2</sup> *R. v. Cockin*, 2 Lewin, 235.

<sup>3</sup> *R. v. Exall*, 4 F. and F. 922.

<sup>4</sup> Benton, p. 5. See *post*, p. 355.

tuous period from 1806 to 1816, the embargo acts and the resistance to them, the conduct of the Hartford convention, the construction of the Federal Constitution, the power of the United States "to raise and support armies," and the right of the States to secede from the Union. Chief Justice Parker, who presided, had, as a member of the Supreme Judicial Court in 1812, solemnly advised the Governor and Council that the President of the United States could constitutionally call out State militia for national defense and war only at the will of the Governor of the State. The leading counsel for the defense (afterwards a justice of the Supreme Judicial Court) maintained that the States had a constitutional right to secede, and in his argument stated this doctrine in the plainest terms, without correction by the court or dissent from Mr. Webster or the Solicitor General.<sup>5</sup> And, as a climax to all this, the Solicitor General thought it necessary to call to the witness stand the great defender and expounder of our Federal Constitution and to put to him this question: "Did you at that or at any other period ever enter into any plot to dissolve the Union?" To which Mr. Webster replied, "I did not, sir."<sup>6</sup>

But the prosecution failed. Why? Because—though Mr. Webster insisted that the editor had charged him with a treasonable plot to break up the Union, though in his home town where his influence and authority was unbounded he pushed the case as a personal matter with all the resources at his command—he was not able to obtain a verdict against Mr. Lyman for the simple reason that the jury was not convinced that the charge was ever really made.<sup>7</sup>

<sup>5</sup> *Id.*, p. 2.

<sup>6</sup> *Id.*, *post*, p. 372.

<sup>7</sup> Webster's biographer has this, among other things, to say of

"Closely connected with this trial was the famous controversy between John Quincy Adams and certain Massachusetts Federalists as to his charges in the *Intelligencer* of October 21, 1828. On November 26, 1828, after Mr. Lyman had been indicted and before his trial, Harrison Gray Otis, Israel Thorndike, William Prescott, T. H. Perkins, Daniel Sargent, John Lowell, William Sullivan, Charles Jackson, Warren Dutton, Benjamin Pickman, Henry Cabot (son of the late George Cabot), C. C. Parsons (son of the late Theophilus Parsons), and Franklin Dexter (son of the late Samuel Dexter) wrote Mr. Adams and asked him to name the leading Federalists in Massachusetts who, as he had charged, intended to dissolve the Union in 1808, and to give the evidence on which the charge was founded. December 30 Mr. Adams wrote a long reply to this letter, reiterating his charges but refusing to give names or to state evidence in support of it. The signers then published as a supplement to the *Boston Daily Advertiser* of January 24, 1829, their letter, Mr. Adams' reply, and an 'Appeal to the Citizens of the United States,' in which they

the trial: "In the time of the embargo and of the New England resistance to it, Webster was a young lawyer in New Hampshire and had no personal connection with the gentlemen who were named by the article as the obnoxious plotters against the Union, all of whom were citizens of Massachusetts. Mr. Webster's own course, moreover, respecting the embargo was well known or could be easily ascertained; and if there was anything treasonable in the proceedings or design of the subsequent Hartford convention, it was quite notorious in Boston, in 1828, that he had never had anything to do with it and had disapproved of it. He had other reasons for feeling deeply hurt by the publication. He knew well, as everyone else knew, that the New England resistance to the embargo was a constitutional resistance; that the law was subject to a test of its validity in a court of the United States and was upheld, and that the people who suffered by it submitted. The eminent men who were charged with fomenting treasonable projects had since become his personal friends and his name was now coupled with theirs in an infamous charge founded on statements said to have been formally made by a man filling the exalted position of President of the United States and whose re-election Mr. Webster now favored. Before the trial came on the defense intimated that the course which they should take would lead to important developments concerning the political period of the embargo; but they abandoned this design and contented themselves with an effort to show that the article was no libel upon Mr. Webster, as no malice was intended toward him, the whole being a fair comment on the statements and conduct of Mr. Adams." *Curtis, Life of Webster*, vol. 1.

solemnly denied all knowledge of any project to break up the Union or of any plan analogous to it in 1808 or at any other time, and severely commented upon Mr. Adams' charge and conduct. They also printed these papers as a pamphlet, which passed through two editions and was circulated throughout the United States. Mr. Adams was much incensed and prepared a long and bitter reply in which he concentrated and stated all that could be said against the New England Federalists. This reply, entitled 'Appeal to the Citizens of the United States,' was not printed until November, 1877, when it was published in 'Documents Relating to New England Federalism,' by Henry Adams (p. 63-329). A statement of its charges is given in 'Life and Letters of Cabot,' by Lodge, published earlier in 1877 (p. 412). Numerous allusions to the preparation of it occur in Mr. Adams' diary in 1829."\*

The style of the indictment against Mr. Lyman deserves notice, as it was most unusual, being framed upon the law of *scandalum magnatum*, or the slander of great men, an offense first recognized by the English Star Chamber, but never adopted as part of the common law in the United States. Although Daniel Webster was one of our most distinguished orators and statesmen and at the time was a Senator from the State of Massachusetts, yet in the realm of law there are no "great men" in the Republic.

It was not alone the fast and pleasure-loving youth of the city of New York that were captured by the beautiful victim of young *John P. Robinson* (pp. 426-487). For four years her name was on every tongue and, like Helen of old, the town was hers. James K. Paulding,<sup>9</sup> the versatile and popular author of the day—co-author, with Washington Irving,<sup>10</sup> of the Sal-

\*Benton, pp. 106-109.

<sup>9</sup> Paulding, James Kirke (1779-1860). Born Nine Partners, N. Y. American novelist, poet, historian, and politician; Secretary of the Navy, 1838-1841. Died Hyde Park, N. Y.

<sup>10</sup> Irving, Washington (1783-1859). Born New York City. American historian, essayist, and novelist. He studied law in his youth, but soon turned to literature. He lived abroad many years and was

magundi papers; and later Secretary of the Navy—must needs describe her in this language in an article written for that other literary lion, Nathaniel P. Willis,<sup>11</sup> who was then editing the favorite magazine of fashion, *The Mirror*:

"She was a shade below the medium height, but of a form of exquisite symmetry and which, though voluptuously turned, was sufficiently dainty in outline to give her the advantage of a medium stature to the eye. Her complexion was of a clear brown, bearing in it the ardor of that shade without the dregs and specks which are too apt to muddy the coarser specimens of the brunette, and which, instead of the Promethean fervor, indicate no quality beyond mere grossness of blood. Above a forehead of transparent smoothness and beside a pair of ivory temples in which might be seen a delicate tracery of blue, she trained two waves of glossy, jet-black hair, while on the top—that crown of female glory—reposed the richness of an abundant coil. Her features were not what might be called regular, but there was a harmony in their expression which was inexpressibly more charming than a mere mathematical agreement or a precise accord. The nose was small, which was a fault; the mouth was large, but the full richness of the satin lips and the deep files of ivory infantry which crescented within their rosy lines redeemed its latitudinal excess; while her deep, black, steady eyes, streaming now with precocious knowledge and anon languishing with meditation or snapping with mischievousness, gave the whole picture a peculiar charm which, despite its disagreements, entitled it to the renown of one of the most fascinating faces that ever imperiled a susceptible observer. Added to all these natural gifts, she possessed a nice and discriminating taste for dress, which, aided by her graceful carriage, consisting of a sweet oscillation that seemed rather to woo than to force the air to give it place, served to display those blessings to a best advantage. In disposition this lovely creature was equal to her form. Her heart was kind to excess to all who required her assistance, though the ardor of her temperament rendered her amenable to the fiercest sentiments of passion."

successively attaché of the United States legation at Madrid, secretary of legation at London, and minister to Spain. In 1846 he returned and made his home at Sunnyside, on the Hudson, where he died.

<sup>11</sup> Willis, Nathaniel Parker (1806-1867). Born Portland, Me. American poet and author. Graduated Yale, 1827; traveled in Europe a great deal, but settled at his country seat, Idlewild on the Hudson, in 1846, where he died.

And when she lay dead in the house in Thomas street,<sup>12</sup> Bennett, the elder,<sup>13</sup> who had just founded the New York Herald, went to view the body, and the next day printed a description of what he had seen. He was lost in admiration of the beautiful corpse that surpassed the finest statue of antiquity. The room was elegant in its ornaments. There was a library of novels, poetry, and biography. On the wall hung a painting of Lord Byron. And he added, "The extraordinary murder has caused a sensation in the city never before felt or known. The house is in danger from the mob; let the authorities see to it. A morbid excitement pervades the city. This beautiful woman has done more harm to the youth of New York than anything that has ever come to our city."

New York was a metropolis of 200,000 souls when Helen Jewett burst upon it, and it was in lower Broadway that on any fine afternoon the fashionable, the

<sup>12</sup> "Those who are curious over ancient sites and old-time places might be pleased to know definitely where stood the celebrated house of Mrs. Townsend. The little stretch of Thomas street extending from Hudson street to West Broadway is, I should say, about 300 feet in length. West Broadway was aforetime South Fifth avenue and before that Chapel street. The Townsend house, a yellow brick, was on the south side of Thomas, a trifle nearer Hudson than what is now West Broadway. To the rear was a great shady, tree-sown yard, and there in fine weather Helen and her Frank read Byron. You may still find a weed-grown suggestion of the yard with a moldering western fragment of the Townsend house should you care to walk through Thomas street. Also, I advise a policeman for that pilgrimage." Lewis (A. H.), post.

<sup>13</sup> Bennett, James Gordon (1795-1872). Born in Scotland and died in New York City. A noted American journalist; founded the New York Herald in 1835, and in 1871 sent Stanley as an explorer to Africa. He was succeeded by his son of the same name, who made the newspaper a great political power and established an edition at Paris. The latter, though personally conducting both editions until his death in 1918, lived most of the time in France.

literary, the political, and the half-world made their promenade. A recent writer has given a clever pen-picture of the scene:

"There of a sunny afternoon the great Edwin Forrest frowned and strutted. There, too, you might have met that sun of American letters and immortal dinner eaters, ever loving and leaning upon the rich, Washington Irving. And after him the melancholy Poe, the busy Bayard Taylor, the aged Chancellor Kent, urbane, ambling, thinking on his 'Commentaries'; Nathaniel Willis, just home from Europe, pleasing and being pleased; the middle-aged Philip Hone, prig, gentleman, and altogether delicious diarist; Editor Morris, of *The Mirror*, with his 'Woodman, Spare That Tree'; Poet Halleck, from his desk drudgery in Astor's counting house; Ogden Hoffman, fresh from some jury victory in court; David Graham, that other giant of the bar; Bishop Hobart, smugly satisfied with his rectorship of Trinity; Paulding, hoping, but failing, to rival Irving; Fenimore Cooper, austere, high, dull, sour because Irving had been given a public dinner of honor and he had not. In that afternoon Broadway mile you would have encountered a procession as endless as it was immortal. There, too, came the fashionable dames, all beauty and blue blood—mostly the latter—the Ogdens, the Livingstons, the Jays, the Crugers, the Costers, the Beckmans, the Schermerhorns, the Bayards, the Wards, the Emmets, and the Storms.

"As you wind modestly in and out you note a sudden change. Forrest relaxes his ramrod strut, Cooper forgets to be sour, the drooping Poe fires as with the inspiration of a new Annabel Lee, Willis relights the lamp of his flagging interest, as if another and a fresher Lady Blessington had appeared to patronize and bedazzle him; the gray Chancellor straightens his stooped shoulders; the 50-year-old eye of Irving, supposed to be permanently dimmed by the death of the beautiful Miss Hoffman, daughter of the aforesaid Ogden of that ilk, beams and brightens, while the ascetic cheek of Bishop Hobart becomes overspread with a rosy flush. What has wrought the marvel? What, indeed, but the last town wonder, the talk of club and drawing room, the admiration of every man and the despair of every woman—the lovely, lustrous, bewildering Girl in Green! The target of every glance, she slowly sweeps along, challenging, demanding, devouring with unblinking, deep, black, velvet eyes. It is to be remarked that the splendors of the fashionable dames about her gutter and dwindle and sputter to a sickly, pale inconsequence beneath the influence of her strange radiance, like candles dying in the sun. Who is this lustrous, overwhelming Girl in Green? Who but Helen Jewett, newly come to town."<sup>14</sup>

<sup>14</sup> Lewis' *Nation-Famous New York Murders*, post 432.



On the trial the evidence to convict the murderer was sufficient to satisfy even a reasonable doubt. And the motive was equally clear, for Robinson had just become engaged to his employer's daughter and he feared that Helen's jealousy might interfere with his hopes. Robinson did not testify and his only defense was an alibi, to support which there came but one witness, the grocer Furlong, "half fool, whole liar," who three weeks later had the repentant grace to drown himself in the North River. That some of the jurors were bribed, all of the New York newspapers charged and most of the community believed. What influence was there behind Robinson and who paid Furlong and the jury? It was the old fable of the dead lion and the living ass. When it was learned that the murderer had led a double life—in business and at home, Richard Robinson, and when he issued forth at night to see the town, Frank Rivers—and that he wore a Spanish cloak and a velvet cap, that gaping, idiotic fraction of the public with whom "murderer" was and is a synonym for "hero," copied those articles of apparel and the Robinson cloak became a Broadway furor. With them was the whole force of the moral side of the community that forgot for a moment the crime that had been committed and, incited by Bennett's article, thought only of the public menace that had been removed. Extravagant meetings of sympathy were held in several of the churches, and the Rev. Mr. Brownlee of the Chatham street chapel openly supported the murder as a deed to be commended. These constituted the ill-assorted crowd that on the opening day of the trial howled the court into an adjournment and on the second day had to be clubbed into quietness by fourscore and more marshals.

"As the twelve filed to their seats a particularly seedy looking juror signaled Robinson that he was safe. At the verdict a great

shout went up while a hundred 'Rivers caps' were tossed in the air and a hundred 'Robinson cloaks' were waved. The public, and in particular the court-infesting, trial-attending public, has been a dishonest, hydra-headed ass in every age. Throughout the five trial days a middle-aged, mysterious stranger sat at Robinson's elbow. In figure he was big, lean, angular, and powerful. His hair was iron gray, his eyes were small, sinister, and rat-like; his seamed, hardwood-finish face wore an expression of coarse cunning. While nothing escaped him, he no less lacked the natural fervor of a principal. Plainly he was somebody's agent. Who was that somebody? The question, often put, was never answered. Rumor had it that the hardwood-finish stranger represented a lady of wealth who lived in Washington square, North, and who, adoring Robinson, wasted the ransom of a king in buying the murderer's freedom. Be that as it may, the mysterious, hardwood-finish stranger met the shabby juror at Murray and Broadway on the heels of the verdict and paid him money. What other jurors he may have met and paid was never known.

"Robinson went to Texas and in two years loathed himself to death. Helen, dying at twenty-three, her philosophy of life defeated and broken down, was buried in an unstoned grave on the banks of her clear-rushing native Kennebec. The town talked for a decade of the lustrous Girl in Green. Also, it was more than a month after the Robinson trial and acquittal before the town dared look at its own shameless face in the glass."<sup>15</sup>

That such breaches of the peace as brought into court *Ezekiel De Coster* and his companions (pp. 488-493) were not uncommon at this period and later, the current law reports which record many actions for damages for the burning and wrecking of houses of this character, very clearly show. Our city fathers, in days gone by, used to turn a blind eye to them; only a few decades ago the officers of a neighboring municipality, on paying a visit to one of the largest and most populous cities of the Southwest, were given the hospitality of a well-known and popular resort, where the best French champagne was served *ab libitum* and at war prices, the bill being duly approved and paid by the

<sup>15</sup> Lewis, A. H.

board of aldermen, without disturbing the conscience of a single legislator or taxpayer.

Never before or since in this country has a man or woman stood before a criminal tribunal surrounded and supported by such an array of counsel as did *Daniel E. Sickles* (pp. 494-762), when in the national capital, to which place he had come as a Member of Congress, he pleaded not guilty to the murder of the son of the author of the "Star Spangled Banner."

They were seven; at their head were James T. Brady and John Graham, two of the ablest criminal lawyers and forensic orators the Empire State has produced, and Edwin M. Stanton, of Ohio, a brilliant advocate, a profound jurist, and in after years the great War Secretary of the Union. Their defense was two-fold: First, insanity (a manifest absurdity as to one who had been selected by his State to represent it in the National Legislature and who was to become a major general and win distinction on the battlefield and to be accredited a minister to a foreign court); and, second, justification. In speeches of great length and eloquence replete with historical and biblical references, Mr. Brady and Mr. Graham contended that if in a passion, on hearing of the unfaithfulness of his wife, a husband slays the paramour, the law justifies the act. But that this is not the law of the land the presiding judge clearly pointed out. It has been laid down again and again by our appellate courts, notably by the chief justice of North Carolina, in the following language:

"Where the husband only hears of the act of his wife, no matter how well authenticated the information may be or how much credence he may give the informer, and kills either the wife or the paramour, he does it not upon present provocation but for a past wrong—a grievous one, indeed; but it is evident he kills for revenge. Let it be considered how it would be if the law were otherwise.

How remote or recent must the offense be? How long or how far may the husband pursue the offender? If it happen that he be the deluded victim of an Iago, and after all that he has a chaste wife, how is it to be then? These inquiries suggest the impossibility of acting on any rule but that of the common law without danger of imbruing men's hands in innocent blood and certainly of encouraging proud, head-strong men to slay others for vengeance instead of bringing them to trial and punishment by law."<sup>16</sup>

Mr. Stanton's arguments were on a different line. Admitting that the common law of England did not justify a homicide like this one and that we inherited our common law from that country, he maintained that the English law had its origin in an age—that of the Stuarts—which was one of vice and profligacy and should not be followed here or declared to be a part of our jurisprudence. He followed this with a view of the relation of husband and wife, which sounds rather strange in this day of woman's entry into almost every calling formerly pursued by men alone and her demand for "equal rights" and the suffrage amendment to the Constitution. After an eloquent description of the sanctity and the beauty of the family relation and its importance as a factor in social life, he applied the law of self-defense of property to the case in issue. If, he argued, a burglar enters my house to steal my goods, I am excused by the law if I take his life in protecting them. And as the wife's being and existence are "incorporated and consolidated," according to Blackstone, into that of her husband, so that she is without power to consent to any infraction of his marital rights, and "as the wife is the property of the husband," he has the same right of self-defense against one whose object is to withdraw her and her affections "from his roof, from his presence, from his wing, from his nest"

<sup>16</sup> *State v. Neville*, 6 Jones (L.) 433.

as he has against one who seeks to ransack his strong box where his other jewels are stored.<sup>17</sup>

A jury sworn to follow the law and the evidence should have convicted Sickles of manslaughter at least. In holding him guiltless of any crime they violated their oaths. There is little doubt that the arguments of these great advocates and the verdict of acquittal that followed paved the way for the claim of an "unwritten law" now the favorite defense when a man or woman kills in retaliation for some social wrong. But it is a lie on its face; a professional trick to deceive laymen and to save murderers' necks on sentimental grounds. There is no law in Anglo-American jurisprudence, written or unwritten, to support such a doctrine.

To interfere with the carrying of Uncle Sam's mail is a most serious matter, yet the trial of *John Hart* (pp. 763-766) shows that it is sometimes excusable.

One who discovers that a counterfeit banknote or a spurious coin has been given him as payment or in change is likely to think that it is no crime to pass it on to another unsuspecting creditor, especially if he is unable to find the person from whom he received it. But this would be a grievous mistake. (*James Galaher* and *James McElroy*, pp. 767-772.) The law sternly forbids such a thing. Yet, if no one should break the chain and stop the circulation, what harm would be done to anyone? For, after all, for the purposes of exchange a piece of iron is as good as a piece of gold if people would only think so. The editor many years ago discovered one night that a lead half dollar which he had in his pocket, he had that day mistakenly paid for his luncheon at a popular restaurant. But on going there the next noon and tendering a good coin he

<sup>17</sup> *Post*, pp. 719-720.

received this reply from the genial cashier: "Keep your money, my friend. I ran that old piece on another fellow two minutes after you left."

*Robert Worrall* (pp. 773-784) should not have been convicted and punished. It is well settled and understood that our Federal courts do not resort to the common law as a source of criminal jurisdiction. Offenses cognizable under the authority of the United States are such only as are expressly designated by some Federal written law. Congress alone can define crimes against the United States, fix their penalties, and confer jurisdiction for their trial.<sup>18</sup> As there was no Federal statute in force, when Worrall was tried, making the attempt to bribe a public officer a crime, the court had no jurisdiction. The oddest part of this case, says Dr. Wharton, is that, though Mr. Justice Chase expressly denied that there was jurisdiction, and though there was a divided bench, the court, "after a short consultation," imposed a sentence of an unequivocally common-law stamp. The most rational interpretation is that he had used this short consultation to acquaint himself with the views of his brethren, about which, after *Henfield's* case, there could then have been no doubt. Chief Justice Jay, it is true, had left the bench, but that his successor, Ellsworth, entertained similar views on this question abundantly appears from his ruling in the case of *Isaac Williams*.<sup>19</sup>

The question on the trial of *Isaac Williams* (pp. 785-789) was whether a citizen of one country may without its consent cast off his allegiance and become a citizen of another. The English common-law maxim was "Once a citizen always a citizen"; i. e., that no one has

<sup>18</sup> 94 Fed. Rep. 127.

<sup>19</sup> Wharton's *State Trials*, Introduction.

a right to abjure his allegiance. Chief Justice Ellsworth ruled that the common law of this country was the same as that of England on this subject. And even though, said he, under our laws we naturalize and make American citizens of persons born abroad, "and do not inquire what are their relations to their own countries, this implies no consent of our Government that our own citizens should expatriate themselves." This view has been steadily maintained by our courts.<sup>20</sup> It is, says a modern writer on international law,<sup>21</sup> in accord with sound and undoubted principles. A State as an independent political unit has a right to accept as citizens on its own conditions all who may come into its territory and desire to attach themselves to it; but it can hardly claim a right to dictate to another State the conditions on which that State shall give up all claim to the allegiance of its born subjects. To do so would be to intrude into the sphere of its legislation and trench upon its independence. No surer method of producing international complications could well be found; whereas the rule of leaving to the State of birth to determine whether it will recognize the new citizenship or not, when the individual who has acquired it returns within its territory, precludes all possibility of controversy, while recognizing both the right of the naturalizing State to acquire citizens in its own way and the right of the mother State to deal as it thinks fit with all persons in its dominions who are its subjects according to the provisions of the local law.

Our political department has not, however, agreed with our judicial department on this question. One of the chief causes of the War of 1812 was the disregard

<sup>20</sup> See *Trial of Henfield*, 4 Am. St. Tr. 615.

<sup>21</sup> Lawrence (T. J.), *International Law*.

paid by the British Government to the naturalization of British subjects by our laws. In 1868 the Congress of the United States asserted that the right of expatriation was a "natural and inherent right of all people," and in 1870 the British Parliament, in passing a naturalization act, recognized the naturalization of her subjects in other countries. Since then, by treaty with a number of nations, the consent to the expatriation of their subjects or citizens has been secured by our Government.

A layman, after reading the trial of *Daniel K. Allen* (pp. 790-799), would be much surprised at the way it ended, and one can imagine the conversation that might follow his next meeting with some lawyer friend:

The Layman: "I don't see why Allen was declared not guilty. He certainly cheated the bank when he induced it to cash his check for nearly \$5,500 when he did not have half that sum on deposit. If that isn't getting money by false pretenses, I don't know what is."

The Lawyer: "I will explain it. You see, false pretenses is a statutory crime, made so in recent years, like a lot of others, by legislative act. A century ago if one did not kill his fellow man, which was called murder, or beat him with his fists, a club, or some other weapon, which was called assault and battery, or stealthily, and to enrich himself, take his pocketbook or his jewelry from his person or any of his chattels from his house or his shop, which was called larceny, or make him give up any of these things by threats or menaces, which was called robbery, or break into his dwelling at night, which was called burglary, or set fire to it, which was called arson, he need have little fear of the heavy hand of the law. This was under what was called the common law—not laws written and passed by legislatures and parliaments, but great principles of justice between man and man, declared and enforced by great judges. But the mania for written laws to make new crimes very early seized the American people, and it has grown worse and worse until today we try to cure every political and social ill by passing a statute, and our 48 or more legislatures enact, each of them, every year more new laws than the Parliaments of England and France do in ten. I have studied and practiced law for half a century, yet, for the life of me, I could not tell you one quarter of the things which the laws of this State forbid. In feudal days, when the knight was in constant



battle, at the head of his retainers, with some rival lord, he had always at his side his personal chaplain, ready on the instant to shrive him in case of sudden illness or mortal wound. In the present commercial age our captains of industry have always at their call a well-paid attorney to advise them how to do business without getting into the clutches of the law, and, if they do, how to keep out of jail. In the common-law era the line between the honest citizen and the criminal class was very clearly defined. But when the national prohibition act is added to the already too long list of criminal statutes, everybody will sooner or later become a criminal, for a crime is best defined as 'anything prohibited by the State under pain of punishment.'

"Now, at common law, if a man got another's property by cheating, as if he falsely stated that things he was selling were of a better quality or worth more than they really were, he was not guilty of a crime. So if he made any other untrue representation by which he obtained another's money or goods. The remedy of the injured party was to sue the scoundrel for damages in a civil court. And when the legislatures passed laws declaring that these things should henceforth be crimes, the courts, in interpreting these statutes, laid down certain rules, and one of these was that they were intended to protect those persons only who could not protect themselves and were not to shield a man from the consequences of his own credulence, imprudence, or folly. Thus, if 'A', learning that 'B' wanted to buy a fine blooded horse, brought to him an old and broken-down one, telling him that it was a splendid young one, and 'B' paid him the price after looking at it, the court would inform 'B' that it was his own fault; that 'A' did not cheat him at all, because he knew what 'A' said was false. So if the horse had been covered by a blanket and 'B' had not taken the trouble to take it off and examine the animal, the court would say it was your fault again, for you would have known had you used the slightest care that what 'A' told you was untrue.

"It was this legal rule, viz, that where a person knows or has the means at hand of knowing that the statement made to him is untrue, he can not be said to have been deceived, that rendered Allen not guilty of obtaining the money by false pretenses, for the cashier had only to call on the bookkeeper in the same room to learn that the customer had not enough money on deposit to cover the check he presented."

In the early part of the nineteenth century there was a large emigration of Germans to Pennsylvania.<sup>22</sup>

<sup>22</sup> As to the way in which many of them reached our shores, see Trial of Von Ritter, 13 Am. St. Tr.

They went into business and manufacturing in Philadelphia and other cities; they took up farms; they builded themselves houses, schools, and churches; they prospered financially. But all the time they looked to making America German. They stuck to their old customs, they used their native tongue, which they taught to their children, and they decreed that the English language should never be used in their churches or Sunday schools. And when time rolled on and their youth born in the United States became of age and wanted to use the language of the Republic, a large number of the German-born residents in Philadelphia issued a manifesto in which the signers declared that they would fight such a reform "with their bodies and lives." The State objected and indicted and convicted over 50 of them for conspiracy. (*Frederick Eberle and others*, pp. 800-896.) More than a century passed and then in a great war crisis it was discovered that this policy had never been abandoned, but was still carried on in hundreds of cities and hamlets in the country, including the little town of Salem on the plains of far-away North Dakota, where, in a Lutheran church, the minister preached and prayed in German, the congregation read and sang in German, and the Sunday-school teachers were warned against using anything but German in their classes. This was not against any Federal or State statute. But when we entered the Great War it was a very gross violation of the United States statute called the Espionage law for the parson to tell his congregation that the kaiser was waging a noble war; that the Lord was assisting him to overcome his enemies; that the sinking of the *Lusitania* was right; that America had no grounds for going to war; and that he hoped the German army would triumph. So, for this and

other equally disloyal sayings he was tried, indicted, and sentenced to prison. (*John Fontana*, pp. 897-968.) It is the custom of the French Government whenever a great speech is delivered, in a legislative body or elsewhere, to have it placarded in every city, town, and commune in the land, so that every citizen may read it. Judge Amidon's masterly exposition of the duty of the emigrant to discard with his old allegiance the habits and thoughts of foreign countries and to endeavor to become a real American, should be displayed, so that he who runs may read, in every community in the United States.

The story of the acts of the German Government, its agents, and sympathizers in this country, both before and after the war began, will not soon be forgotten. During the three years that we were at peace and while the armies of England, France, and Italy were fighting to preserve civilization and liberty on our continent as well as theirs, the German Government and its agents in the United States expended vast sums of money in carrying on various types of propaganda to prevent the manufacture, sale, and shipment of munitions and supplies to the Allies, to keep the United States out of the war, and to maintain the solidarity of the German elements in our population and retard their assimilation. This was done, not only by the distribution of literature, the subsidizing of newspapers, and the attempted bribery of legislators, but by the depletion of our factories and the fomenting of strikes among our workmen. German agents, receiving their instructions from the German embassy itself, placed bombs in our manufacturing establishments and on board our sea-going vessels, and when it was evident that the Nation would stand the menace of the Hun no longer, they

flooded Members of Congress with telegrams, all from the same source and paid from the same purse, but, apparently, the individual views of voters from all sections of the land.<sup>23</sup>

<sup>23</sup> See the report of the Senate Committee on German Propaganda, 66th Congress, 1st session.

Here are four of the trials for acts of German agents before war was declared:

United States v. Gustave Jacobsen and others (Ill.). They were Germans and Hindus and were charged with setting on foot and preparing the means for a military enterprise against the territory of Great Britain. Its object was the inciting of armed rebellion in India and the furnishing of arms, ammunition, money, and a military training to Indian subjects for carrying on and supporting the rebellion. They were convicted.

United States v. Albert Kaltschmidt and others (Mich.). They were charged with a conspiracy to blow up and injure Canadian munition factories, also railroad bridges of the Canadian Pacific Railway Co. used for the transportation of munitions to England and her allies; also the railroad tunnel between Port Huron, Mich., and Sarnia, Canada; also to employ and send into Canada spies to obtain information as to war preparations. Five of them were convicted.

United States v. Von Schack, Ram Chandra, Bagwhan Singh, and others (Cal.) They were Germans, Hindus, and Americans. Out of about 100 indicted, 4 pleaded guilty and 30 were tried, of whom 29 were found guilty. They were indicted for a conspiracy to set on foot a Hindu insurrection in India. They formed elaborate plans for sending arms, ammunition, German officers, and Indian revolutionary leaders from this country to India, many details of which, such as the actual purchasing of two vessels and the loading thereon of a cargo of arms and ammunition, were carried out. All of this conspiracy, shown to have been originally instigated by the German Government at Berlin, was financed by the German Government through the German consular officers at San Francisco. The trial covered many weeks and was marked by many dramatic incidents, the most striking of which was the assassination on the last day of the trial of Ram Chandra, the leading Hindu revolutionist operating in the United States, by another defendant, Ram Singh, who, while firing indiscriminately in the court room, was in turn killed by the United States marshal.

United States v. Franz von Rintelen and others (N. Y.). They were indicted for attempting the destruction of the steamship Kirk

Terrible as were the methods employed by the German military leaders by land and sea, the conduct of the German Government towards neutral and friendly nations was even more disgraceful, as it showed a studied disregard of every rule of comity among nations and of every maxim of international law. For three years the people of America, called upon by their President to observe the strictest neutrality, responded most loyally to his appeal, though the sympathy of every real American was with England and France in their heroic struggle to preserve their liberty and civilization. And our Government did the same, doing nothing and permitting nothing that was not justified by the law of nations. But Germany not only sank the ships of neutrals and murdered their innocent seamen and passengers but carried on a secret warfare against every neutral in their own territories. History records no other instance of such a diabolical national policy. In the year 1862, in the midst of our Civil War, when the North was sorely pressed and victory for the Union hung in the balance, Great Britain violated international rules, as was subsequently decided by the Geneva Tribunal, by permitting Confederate warships to be built and equipped in her shipyards and to sail from her ports to prey upon our commerce. In vain did our Government protest. Fancy President Lincoln and our minister at London, Mr. Adams,<sup>24</sup> employing secret

Oswald, then lying in New York Harbor, being loaded for a trans-Atlantic trip. They carried upon the boat and placed in the hold bombs or explosive devices, so arranged as to explode and set fire to the vessel while at sea. Their acts resulted in the starting of a fire on the vessel while at sea, which was, however, discovered in time to save it. Von Rintelen was a well-known German agent engaged in bombing plots in this country. They were convicted.

<sup>24</sup>ADAMS, CHARLES FRANCIS (1807-1886). Born and died at Boston; son of the sixth President of the United States; graduated from

agents to corrupt English workmen, to stir up rebellion among the people, to blow up factories and shipyards, and to sink her vessels after they had left her ports to engage in peaceful commerce. Such an idea is unthinkable.

When war was declared, Congress promptly passed the Espionage act, which did much to put an end to this internal warfare and under which the North Dakota German-American preacher was convicted.<sup>25</sup>

Harvard, 1825; admitted to bar, 1828; member Mass. Legislature, 1831; Member of Congress, 1859-1861; minister to England, 1861-1868; member Geneva Tribunal, 1872; author of *Life and Works of John Adams* and editor of *Diary of John Quincy Adams*.

<sup>25</sup> The report of the Attorney General of the United States (Washington, 1918) gives a summary of the proceedings of the Government for disloyal acts of Germans and German sympathizers. The following are examples:

(1) *United States v. Frederick W. Wursterbarth* (N. J.). He was a naturalized German, declined to contribute to such funds as the Red Cross, Y. M. C. A., and others designed to help the armies, stating that he would do nothing to injure Germany or to help defeat Germany, had relatives there and did not want America to defeat that country. The court held that this showed personal disloyalty and allegiance to the enemy country, Germany, and that he had secretly retained that allegiance at the time of his application for citizenship papers and had thus obtained citizenship by fraud, which must be revoked.

(2) *United States v. Carl August Darmer* (Wash.). He was naturalized in 1888, had refused to buy Liberty bonds because he was of German descent and buying Liberty bonds would be the same as "kicking his own mother." This was held by the court to constitute a *prima facie* case to revoke his citizenship.

(3) *United States v. Paul Hennig* (N. Y.). He, a native of Germany and a naturalized citizen, was a foreman of the gyroscope department of a plant engaged in the manufacture of torpedoes. He was charged with having tampered with certain parts so that they became defective and might even cause the torpedo to reverse its course and strike its own ship; also with having scratched and mutilated bearings and other parts to delay production.

(4) *United States v. Louis Werner and Martin Darkow* (Pa.). They were the chief and managing editors of a German-language

But there were enemies within our gates even more dangerous than the German or the German-American,

newspaper, the Philadelphia Tageblatt. It contained, during the early months of the war, various headlines, articles, and editorials, the nature of which are classified under the following heads: (a) Glorification of German strength and success; (b) discouraging enlistments; (c) abuse of the Allies; (d) attacking the sincerity of the United States; (e) obstructing our fiscal war measures; (f) commending an anti-war stand on the part of German-Americans; and (g) falsification of war news, giving it a pro-German tinge. They were convicted under the Espionage act.

(5) United States v. Emanuel Baltzer and others (S. D.). Twenty-seven farmers of German extraction formed, after our entrance into the war, a German Socialist society and sent to the Governor of South Dakota a so-called petition in which they objected to the quotas under the draft law assigned to their county and proceeded to attack the war as a war instituted by and for the capitalists, and asked the governor to repudiate the war and the war debt. They were convicted.

(6) United States v. Frederick Krafft (N. J.). He was a prominent leader of the Socialist Party and editor. He made a speech in a public square before a large audience, which included drafted men, attacking the war and conscription. He was convicted.

(7) United States v. Abraham L. Sugarman (Minn.). He was secretary of the Socialist Party in Minnesota and made a speech advising disobedience to the selective-service act.

(8) United States v. Charles T. Schenck and others (Pa.). They were charged and convicted of publishing and distributing a circular attacking the selective-service act as unconstitutional and advising disobedience of its provisions.

(9) United States v. Emil Herman (Mo.). He displayed, where all who passed his place of business could read it, a circular attacking the vocation of a soldier as the lowest and basest of all occupations. This circular was falsely attributed to the author Jack London, who not only had not written it but who, before his death, had publicly repudiated it. He was convicted.

(10) United States v. Conrad Kornmann (S. D.). He was the editor of a German-language newspaper at Sioux Falls, S. D., and president of the South Dakota German-American Alliance. He sent letters and telegrams to officials of that alliance showing a systematic effort to promote a pro-German point of view and pro-German activities among the members of the association. He was convicted.

(11) United States v. Jacob Frohwerk and Carl Glessner (Mo.). They were authors of articles in a German newspaper, the Missouri

viz, the native Socialist-Pacifist, whose treasonable exploits are shown in the opening trial of the next volume.

Staats Zeitung, of Kansas City. They did not cease their opposition to the war upon our entrance, but continued the type of articles characteristic of that portion of the German-American press which remained disloyal for a considerable period after our entrance. These articles attacked the genuineness of the motives of the war as expressed by the President and Congress, played up Germany's military successes and the German point of view, attacked the motives of Great Britain, France, and Italy, and inserted in the paper other articles of a similar strain designed to oppose the war. They were convicted.

(12) United States v. Benedict Prieth and others (N. J.). They were the owners, publishers, editors, and leading writers of a German newspaper at Newark, N. J., and wrote and circulated a series of articles attacking the motives behind the war and suggesting non-participation of the German-Americans.

(13) United States v. Schoberg (Ky.). He, in a conversation with a group of men, expressed a preference for the German side of the war. He was indicted under the amended section 3, title 1, of the act of May 1, 1918, and the case was one involving the interpretation of that provision of the amendment which prohibits by word or deed supporting or favoring the cause of Germany or opposing the cause of the United States. He was convicted.



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**THE TRIAL OF THE CHICAGO ANARCHISTS:  
AUGUST SPIES, MICHAEL SCHWAB, SAM-  
UEL FIELDEN, ALBERT R. PARSONS,  
ADOLPH FISCHER, GEORGE ENGEL,  
LOUIS LINGG AND OSCAR W. NEEBE  
FOR CONSPIRACY AND MURDER.  
CHICAGO, ILLINOIS, 1886.**

**THE NARRATIVE.**

In the spring of 1886, the workingmen of Chicago and other industrial centers in the United States were excited upon the subject of inducing their employers to reduce the time of labor each day to eight hours. In the midst of this eight-hour movement, as it was called, a meeting of workingmen was held on the evening of May 4th, at the Haymarket on Randolph street in the west division of the City of Chicago. While the closing speech was being made, several companies of policemen marched into the crowd from their station near by and ordered the meeting to disperse. At this instant some one threw among the policemen a dynamite bomb and immediately persons in the street and on the sidewalk fired on the police and as a result of both seven policemen were killed and sixty more were seriously wounded.

It was at once known to the public that the Haymarket meeting had been called by members of an anarchist organization; that the speakers there were anarchists; so within a few days every prominent anarchist was under arrest and August Spies, Michael Schwab, Samuel Fielden, Albert R. Parsons, Adolph Fischer, George Engel, Louis Lingg and Oscar W. Neebe were indicted and brought to trial charged with the murder of Matthias J. Degan, one of the policemen who lost his life on the evening of the 4th of May.

The trial began in June, 1886, and after twenty-two days spent in selecting a jury, during which no less than 981 per-

They were examined, the taking of evidence was begun. It was admitted that no one of the prisoners threw the bomb with his own hands; they were all charged with being accessories before the fact. It was proved that they were members of an anarchist society known as the International Workingmen's Association,\* some affiliated with one group and some with another. Fisher and Engel belonged to what was known as the Northwest Side Group; Schwab, Neebe and Lingg to the North Side, and Spies, Fielden and Parsons to the so-called American group. Each of these groups or chapters had a sub-organization of a military character known as the Armed Section in which all members having weapons were enrolled, who were known by numbers and not by their own names. A newspaper called the *Arbeiter Zeitung*, conducted in the interests of the German groups, was edited by Spies; Schwab was co-editor and wrote some of the most important of the editorials. Fischer was a typesetter in the office and foreman of the printing department. It was owned by a corporation in which Spies, Schwab, Fischer and Neebe were stockholders. Another newspaper of the same character called the *Alarm*, printed in English, was edited by Parsons and Fielden was a stockholder in it. Another called the *Anarchist* was managed by Engel.

It was shown that a strike began on May 1st, that Spies had been present during a riot at a factory which had occurred on May 3, resulting in a collision with the police and the death of several persons. A few hours after this event Spies had written and caused to be distributed an inflammatory circular headed "Revenge," calling upon the people to avenge the murder of the strikers who had fallen in the fight with the

\* The platform or declaration of principles adopted by this organization and published by a bureau of information and by the *Alarm* and *Arbeiter Zeitung*, urged that the present system under which property is owned by individuals should be destroyed and that all capital which has been produced by labor should be common property. It charged that the government, the law, the schools, the churches, the press are in the pay and under the sway of the property owning and capitalistic classes and that the laboring classes must achieve their deliverance through their own strength.

police. It was proved that two circulars had been issued announcing the mass meeting for the night of May 4, one urging workingmen to come armed and the other omitting that direction. Two witnesses who had turned State's evidence and were themselves under indictment were then called, who swore that a meeting of the Armed Sections had been held on May 3, at which it had been agreed that when the word "Ruhe" appeared in Spies' paper, the *Arbeiter Zeitung*, the members should assemble, provided with dynamite bombs and distribute themselves so as to cover the various police stations. A "committee of observation" was then to act with those men and upon any report of collisions with the police, the conspirators were to hurl their bombs into the station houses, and shoot down all who attempted to escape. This murderous plan according to them originated with Engel, and both he and Fischer were active in arranging the details.<sup>b</sup> Another informer testified that he had aided Lingg to manufacture dynamite bombs for the use of the Armed Sections, according to the plan previously agreed upon, and that early on the evening of May 4th he and Lingg had carried a satchel full of the deadly missiles to a saloon frequented by their group, depositing it in the basement hallway of this resort where anyone who chose to do so could enter and help himself.<sup>c</sup> Materials and apparatus for making bombs were discovered in Lingg's rooms, and the fragments of the exploded bomb conclusively proved that it was the sort which Lingg had manufactured. A witness engaged in the gun business swore that in March, 1886, Parsons called at his store and stated that he wanted to buy forty or fifty revolvers. Upon being shown the samples on hand he declared that they were not what he desired, but that he wanted old, remodeled Remington revolvers.<sup>d</sup> Another gunsmith testified that in the fall of 1885 Engel inquired of him what one or two hundred large revolvers could be purchased for, stating that they were wanted for some society. He bought and paid for one of the pistols

<sup>b</sup> William Seliger, p. 55.

<sup>c</sup> Gottfried Waller, p. 47.

<sup>d</sup> William T. Reynolds, p. 8.

for the purpose of presenting it at a meeting of the society.<sup>o</sup> And after the Haymarket meeting a machine which was intended for the purpose of making bombs was found by the police at Engel's house. It was shown that Fischer was near the place where the bomb was thrown and the next morning when he was arrested there was found upon his person a 44-calibre, self-acting revolver, loaded, and also a file. He wore a belt and sheath under his coat. A witness named Waller testified that Fischer gave him a gaspipe bomb, saying that it was to be used in case of an attack by the police. Waller kept the bomb in his house two weeks and then gave it to a member of the Armed Section, who exploded it in the woods in a hollow tree.<sup>f</sup> Neebe, it was proved, was one of the stockholders of the *Arbeiter Zeitung* and, next to Spies and Schwab, the most active man in its management. He was found in the possession of the *Arbeiter Zeitung* building after the arrest of Spies and Schwab, and announced himself as the person who had charge of the office. There were found in his house on May 7 a red flag, a sword, a breach-loading gun, and a 38-calibre Colt's revolver, five chambers of which had been fired; one chamber was loaded with a cartridge and one had a shell in it. He was shown to have presided at meetings where the use of arms and dynamite against the police was advocated. On May 3 he was seen distributing the "re-venge" circulars. This was about all the proof against him. But a witness named Gilmer swore that he had seen a bomb pass between Spies and Schwab and a man named Schnaubelt<sup>g</sup> and that later when Captain Ward ordered the crowd

<sup>o</sup> Charles E. Prouty, p. 82.

<sup>f</sup> Gottfried Waller, p. 47; Bernard Schrade, p. 49.

<sup>g</sup> Rudolph Schnaubelt was the man who undoubtedly threw the fatal bomb. He was arrested twice with the other conspirators, but released through the stupidity of the police authorities. See Schaack, p. 170. He then made his escape from the city and sent the following letter to the chief of police:

Portland, Oregon.

To the Chief of Police of Chicago,  
My dear old Jackass:

Thanks to your pig-headed lieutenant, I am here sound and safe.

to disperse he saw a man draw a bomb from his pocket and hurl it at the police after Spies had lit the fuse. He was corroborated by one Thompson. Several policemen swore that Fielden had fired upon them from behind a cart which served as the speaker's platform, after the bomb had been thrown.<sup>b</sup>

The prosecution then showed that during the years 1885 and 1886, Schwab, Parsons, Engel and Fielden in numerous public speeches persistently advised and encouraged the workmen to arm themselves for a conflict with what were called the property-owning classes and with the police and militia who were regarded as the special protectors of those classes. These speeches were made at picnics, in workmen's halls, at gatherings of the International groups and from the windows of the *Arbeiter Zeitung*. They denounced the police and the militia; they inveighed against the private rights of property; they advised the purchase of rifles and dynamite and the use of bombs. In a speech in October, 1885, Spies said:

"Don't let us forget the most forcible argument of all—the gun and dynamite."

In a speech the week before the Haymarket meeting Schwab said:

"For every workingman who has died through the pistol of a deputy sheriff let ten of these executioners fall. Arm yourselves."

Parsons said in a speech, February, 1885:

"We need no President, no Congressmen, no police, no militia and no judges; they are all leeches sucking the blood of the poor who have to support them by their labor. I say to you, rise one and all and let us exterminate them all. Woe to the police or the militia whom they send against us."

Before this reaches you I have left here and the only thing I regret is that we did not kill more of your blue-coated hounds.

Schnaubelt.

He no doubt got back to Germany, as he was never heard of again. Schnaubelt was a brother-in-law of Schwab.

<sup>b</sup> H. L. Gilmer, p. 79.

In April, 1885, he said:

"The only way to convince these capitalists and robbers is to use the gun and dynamite. If we would achieve our liberation from economic bondage and acquire our natural right to life and liberty every man must lay by a part of his wages, buy a Colt's navy revolver, a Winchester rifle and learn how to make and use dynamite. Then raise the flag of rebellion—the scarlet banner of liberty, fraternity, equality—and strike down to the earth every tyrant that lives upon this globe. Tyrants have no rights which we should respect. Until this is done you will continue to be robbed, to be plundered, to be at the mercy of the privileged few. Therefore agitate for the purpose of organization; organize for the purpose of rebellion; for wage-slaves have nothing to lose but their chains."

And in August, 1885, referring to the street-car strike:

"If but one shot had been fired and Bonfield had happened to be shot the whole city would have been deluged in blood and the social revolution would have been inaugurated."

When Parsons at the Haymarket meeting mentioned the name of Jay Gould and there were cries of "Hang Jay Gould; throw him into the lake," he said, "No, no, that would not do any good. If you would hang Jay Gould now there would be another and perhaps a hundred up tomorrow. It don't do any good to hang one man; you have to kill them all or get rid of them all." Then he went on to say that it was not the individual always, but the system. "The people who supported must be destroyed *en masse*."<sup>1</sup> Again he said:

"I am a tenant and I pay rent to a landlord—the landlord pays taxes, the taxes pay the sheriff, the police, the Pinkerton knights and the militia that are on duty out at the barracks who are ready to shoot you down when you are looking for your rights. I am a socialist from the top of my head to the soles of my feet, and I will express my sentiments if I die before morning." Taking off his hat, he said: "To arms, to arms, to arms."<sup>2</sup>

And again:

"It is time to raise a note of warning. There is nothing in the eight-hour movement to excite a capitalist. Don't you know that

<sup>1</sup> Whiting Allen, p. 70.

<sup>2</sup> Timothy McKeough, p. 71.



the military are under arms and a Gatling gun is ready to mow you down? Was this Germany, or Russia, or Spain? Whenever you make a demand for eight hours' day, an increase of pay, the militia and the deputy sheriffs and the Pinkerton men are called out and you are shot and clubbed and murdered in the streets. I am not here for the purpose of inciting anybody, but to speak out, to tell the facts as they exist even though it shall cost me my life before morning. It behooves you as you love your wife and children if you don't want to see them perish with hunger, killed, or cut down like dogs on the street, Americans, in the interest of your liberty and your independence, to arm yourselves."<sup>\*</sup>

In a speech in February, 1886, Engel said:

"I advise everybody to save up \$3.00 or \$4.00 to buy revolvers to shoot every policeman down; I want every workingman to join and then advise everybody you know. You save up \$3.00 or \$4.00 to buy a revolver that was good enough for shooting policemen down. Those who could not buy revolvers should buy dynamite; it was very cheap and easily handled."

In a speech in October, 1885, Fielden said:

"You must all use force; you must rush out the present government, as by force is the only way in which you better your condition."

In January, 1886, he said:

"It is quite true that we have lots of explosives and dynamite in our possession and we will not hesitate to use it when the proper time comes. We care nothing either for the military or police, for these are in the pay of the capitalists."

Again in March, 1886, he said:

"We are told that we must attain our ends and aims by obeying law and order. Damn law and order. We have obeyed law and order long enough. The time has come for you men to strangle the law or the law will strangle you."

Witnesses also testified that Fielden was addressing the crowd at the Haymarket meeting when the police arrived and that when he saw them he said: "Here come the bloodhounds; do your duty men, and I'll do mine."

<sup>\*</sup> G. P. English, p. 73.

The State now produced its most damning proof, and that which doubtless had the greatest effect upon the jury, viz.: articles and editorials from the newspapers, the *Arbeiter Zeitung* and the *Alarm*, of which Spies, Schwab and Parsons were respectively the editors. In the office of the first named the police had found dynamite and dynamite bombs, red flags and banners inscribed with revolutionary mottoes and from the editorial library came a copy of Most's science of Revolutionary Warfare, which were all placed before the triers, and which contained instructions with the minutest details as to the best mode of preparing dynamite and other explosives and of making bombs and other weapons. Both newspapers published translations and extracts from this book for the purpose of communicating the information in it to members of the groups and to their other readers among the workingmen. Then copy after copy of the two newspapers were read, enough to convince any intelligent man that they were intended to incite to the use of dynamite and the commission of wholesale murder. On March 2, 1885, the *Arbeiter* said:

"We wonder whether the workingmen of Chicago will at last supply themselves with weapons, dynamite and prussic acid as far as that has not been done yet."

On April 29 it said:

"In the procession there marched a strong company of the various groups. Let us remark here that with perhaps few exceptions they were well armed, and that also the nitro-glycerine pills were not missing."

On October 8:

"All organized workmen should engage in a general prosecution of Pinkerton's police. No day should pass without a report being heard from one place or another of the finding of the carcass of one of the Pinkertons."

In the *Alarm*, February 21, 1885:

"Dynamite! Of all good stuff this is the stuff. Stuff several pounds of this sublime stuff into an inch pipe (gas or water), plug up both ends, insert a cap with a fuse attached, place this in the

immediate vicinity of a lot of rich loafers who live by the sweat of other men's brows and light the fuse. A most cheerful and gratifying result will follow."

The same paper:

"Workingmen, to arms! War to the palace, peace to the cottage and death to the luxurious idleness—one pound of dynamite is better than a bushel of bullets. Make your demand for eight hours with weapons in your hands to meet the capitalistic bloodhounds, police and militia, in the proper manner."

As late as the Tuesday afternoon before the tragedy Schwab said to the workingmen in an editorial in the same paper:

"The murderous capitalistic beasts have become drunk with the smoking blood of laborers. The tiger lies ready for the jump; his eyes sparkle, eager for murder; impatiently he whips his tail and the sinews of his clutches are drawn tight. Self-defense causes the cry: 'To arms, to arms.' If you do not defend yourselves you will be torn in pieces and ground by the animal's teeth."

And in the same edition Spies wrote:

"Then do not delay a moment; then, people, to arms. Annihilation to the beasts in human form who call themselves rulers."

On November 27, the *Arbeiter* said:

"Steel and iron are not on hand, but tin two or three inches in diameter. The price is cheap."

And on April 18:

"A number of strikers at Quincy yesterday fired upon their bosses and not upon the scabs. This recommended most emphatically for imitation."

On June 27 the *Alarm* explained the preparation of dynamite bombs and closed with these words:

"It is necessary for the revolutionist to experiment for himself. Especially should he practice the knack of throwing bombs."

In the *Arbeiter* of March 15, 1886, the editors answered a communication signed "Seven Lovers of Peace," as follows:

"A dynamite cartridge explodes not through mere concussion when thrown. A concussion-primer is necessary."

The lawyers for the defense sought to prove that neither Fischer, Schwab, Engel, Lingg nor Neebe was at or near the Haymarket when the crime was committed; that the meeting had been orderly and that none of the defendants had resisted the police. But the proofs did not meet the issues, for the presence or absence of the accused was not material in view of the conspiracy charged.<sup>1</sup> Moreover, on March 16,

<sup>1</sup> Engel was at the Haymarket meeting, but not when the bomb exploded. In affirming the judgment of conviction the Supreme Court said: "They advised and induced a band of seventy or eighty armed and drilled men to enter into a plot to murder the police with bombs and pistols in a certain contingency and to agree to certain details as to committee, signal word, mass meeting, handbill, meeting places, etc., with a view of carrying that plot into effect. The murder of Degan took place as the legitimate consequence of an attempt to accomplish the objects of the conspiracy originated and planned by themselves. Therefore they aided, abetted, advised and encouraged the commission of that murder. Both were present at the Haymarket meeting on Tuesday night. The evidence tends to show that Engel was at his home on Milwaukee avenue near the Haymarket when the explosion occurred. That some of the conspirators might be at home when the collision with the police should happen was a contingency that was provided for by the terms of the plot. In the event of a collision at night the committee appointed to watch the movement was to report to the armed men at their homes."

Parsons was one of the speakers from the wagon, but he swore that he was not present but was in a saloon near by when the bomb was thrown. But as to this the Supreme Court said: "We do not think that the defendant Parsons can escape his share of the responsibility for the explosion at the Haymarket because he stepped into a nearby saloon and looked at the explosion through the window. While he was speaking men stood around him with arms in their hands. Many of these men were members of the armed sections of the International groups. Among them were men who belonged to the International Rifles, an armed organization in which he was himself an officer and with which he had been drilling in preparation for the events then transpiring. To the men then listening to him he had addressed the incendiary appeals that had been appearing in the *Alarm* for two years. He had said to them: 'One dynamite bomb

1885, the *Arbeiter* had given specific advice on this very point:

"Whoever is willing to execute a deed has to put the question to himself whether he is able or not to carry out the action by himself—if not let him look for just as many fellows as he must have. Not one more or less; with these let him unite himself to a fighting group. Has the deed been completed? Then the group of action dissolves at once—according to an understanding which must be had beforehand, leaves the place of action, and scatters in all directions."

Finally Spies, Fielden, Parsons and Schwab took the stand and endeavored to overcome the impression which their writing and speeches created. But though they asserted their innocence of any specific plot against the police and denied all knowledge of the perpetrator of the crime, they could not but admit that they had advocated similar deeds for years and the fact that they disapproved and deprecated the particular violence of the moment was no answer to the charge that they had openly encouraged murderous defiance of the law and zealously endeavored to commit other less intelligent men to the execution of their mad designs.

properly placed will destroy a regiment of soldiers—a weapon easily made and carried with perfect safety in the pockets of one's clothing.' He had said, too, on Saturday, April 24, 1886, just ten days before May 4, 1886, in the last issue of the *Alarm* that had appeared before May 4: 'Workingmen, To Arms! War to the palace, peace to the cottage and death to luxurious idleness. The wage system is the only cause of the world's misery. One pound of dynamite is better than a bushel of bullets. Make your demand for eight hours with weapons in your hands to meet the capitalistic bloodhounds, police and militia in the proper manner,' and at the close of another article in the same issue he had also said: 'The social war has come and whoever is not with us is against us.' To many of these same men then gathered around the wagon from which he was speaking, after denouncing the police and militia as ready to shoot them down, he took off his hat and cried out: 'To arms, to arms.' Within less than an hour after the delivery of this appeal and on the spot where it was made persons in the crowd to which it was addressed, attacked the police with bombs and revolvers and Degan was killed. What is the law applicable to the state of facts here recited? 'If one purposely excites another to commit an offense—as if he harangues people, inflaming them to a riot and the offense is accordingly committed, he is guilty, though he personally takes no part in it.' 1 Bish. Cr. L. 640."

After long speeches by the lawyers on both sides, Judge Gary charged the jury, reciting among many other things the Illinois statutes defining an accessory as one who stands by and aids in the commission of a crime or who not being present, advises, encourages, aids or abets in its commission, and declaring that such accessories shall be considered principals and punished accordingly.

Late in the afternoon of August 19th—almost two months after the opening of the trial, the jury retired, and the next morning returned their verdict, finding Spies, Schwab, Fielden, Parsons, Fischer, Engel and Lingg guilty of murder, fixing the penalty at death, and Neebe guilty of murder, but fixing the penalty at imprisonment for fifteen years. The Supreme Court of Illinois and the Supreme Court of United States both affirmed the verdict.

Lingg then committed suicide; Spies, Parsons, Fischer and Engel were executed; the sentences of Schwab and Fielden were commuted to imprisonment for life and they, together with Neebe, were pardoned after serving seven years, by John P. Altgeld, then Governor of Illinois.

#### THE TRIAL.<sup>1</sup>

*In the Criminal Court of Cook County, Chicago, Illinois,  
June, 1886.*

HON. JOSEPH E. GARY,<sup>2</sup> *Judge.*

*June 19.*

On May 28, 1886, the Grand Jury<sup>3</sup> returned into court, indictments for murder, conspiracy and riot, against August

<sup>1</sup> *Bibliography.* \**"Anarchy and Anarchists. A History of the Red Terror and the Social Revolution in America and Europe. Communism, Socialism and Nihilism in Doctrine and in Deed. The Chicago Haymarket Conspiracy, and the Detection and Trial of the Conspirators.* By Michael J. Schaack, Captain of Police. With numerous illustrations from authentic photographs, and from original drawings by Wm. A. McCullough, Wm. Ottman, Louis Braunhold, True Williams, Chas. Foerster, O. F. Kritzer and others. Chicago: F. J. Schulte & Company. New York and Philadelphia: W. A. Houghton. St. Louis: S. F. Junkin & Co. Pittsburg: P. J. Fleming & Co. MDCCCLXXXIX."

\**"Anarchy At An End. Lives, Trial and Conviction of the*

Spies, Albert R. Parsons, Adolph Fischer, George Engel, Louis Lingg, Samuel Fielden, Michael Schwab, and Oscar W.

**Eight Chicago Anarchists. How They Killed and What They Killed With. A History of the Most Deliberate Planned and Murderous Bomb Throwing of Ancient or Modern Times. The Eloquent and Stirring Speeches of the Attorneys for the Defense and Prosecution—With the Able Charge of Judge Gary to the Jury. Seven Dangling Nooses for the Dynamite Fiends.** G. S. Baldwin, Publisher, 199 Clark Street, Chicago, Ill."

\* "Reasons for Pardoning Fielden, Neebe and Schwab. By John P. Altgeld, Governor of Illinois. Chicago. 1893."

\* Reports of the Supreme Court of the State of Illinois. Vol. 122. Springfield 1888.

\* United States Supreme Court Reports. Vol. 123. Banks & Brothers 1888.

\* "The Celebrated Chicago Anarchists' Case, from the Western Reporter. Vol. X. Prepared and Published by The Lawyers' Co-operative Publishing Co., Rochester, N. Y."

\* "Life of Albert E. Parsons, with a Brief History of the Labor Movement in America. Chicago. Mrs. Lucy E. Parsons, Publisher and Proprietor. 1889."

"The Rise and Fall of Anarchy in America, Culminating in the Haymarket Massacre. By G. K. McLean. Chicago. 1888."

"August Spies' Autobiography; His Speech in Court and General Notes. 8vo. Chicago. Nina Van Zandt. 1887."

"A Concise History of the Great Trial of the Chicago Anarchists. By Dyer D. Lum. 8vo. Chicago. 1887."

\* GARY, JOSEPH EASTON. (1821-1906.) Born Potsdam, N. Y.; educated in the common schools of his native town and in an academy of the State; went to St. Louis, 1843; admitted to St. Louis Bar 1844; practiced law Springfield, Mo., and Las Vegas, N. M., where he studied Spanish and was able to speak and write it so as to make practical use of same in his professional business; removed to San Francisco, Cal., where he engaged in practice of law; later returned to Potsdam, N. Y., where he remained a short time and then located at Berlin, Wis.; removed to Chicago, 1856, and formed partnership with Murray F. Tuley, which lasted two years. The next three years was a partner of Evert and James Van Buren; elected to the Superior Court Cook County, 1863. He sat upon that bench for 43 years, a record unparalleled in the history of the courts of the United States, and was active up to the time of his death. In November, 1888, was selected by the Supreme Court of the State from the Judges of the Superior Court as one of the Judges of the Appellate Court and became its Chief Justice.

\* The Grand Jury was impanelled on 17th May, 1886, and was composed of the following: John N. Hills (foreman), George Watts, Peter Clinton, George Adams, Charles Schultz, Thomas Brod-

Neebe. The prisoners<sup>4</sup> were charged with being accessories before the fact to the murder of one Mathias J. Degan, a policeman, in the city of Chicago, May 4, 1886, by the explosion

erick, William Bartels, Fred Wilkinson, P. J. Maloney, John Held, A. J. Grover, Frank N. Seavert, E. A. Jessel, Theodore Schultze, Alfred Thorp, N. J. Webber, Adolph Wilke, Fred Gall, Edward S. Dreyer, John M. Clark, John C. Neemes, N. J. Quan and T. W. Hall.

<sup>4</sup> *August Spies* was born in Friedewald, Hesse, Germany, in 1855, educated by a private tutor during his early years, after which he studied at a polytechnic institute. At sixteen he took up the study of forestry and a year later he came to Chicago, and immediately secured a position in an upholstery store. He became editor of the *Arbeiter Zeitung* in 1876. "He was vain and pompous and courted popularity; his constant desire was to place himself on dress parade, so to speak, and he generally sought out, when he lunched down town at noon, some fashionable or crowded restaurant. He would strut to a table which could only be reached by passing other crowded tables, and enjoy the *sotto voce* remarks as he passed or as he sat at the table he had selected—'There is Spies, the noted Anarchist.' No common Anarchist, lager-beer-and-pretzel lunch-houses suited him." Schaack, p. 160.

During his trial a Miss Nina Van Zandt became interested in him and espoused his cause. She was a young girl of beauty and considerable mental endowment, who had moved in good society, but, notwithstanding her social position she sought an introduction and soon fell desperately in love with the Anarchist. She was an only child and the petted daughter of parents of social connections. Her parents threw no obstacles in the way of her attachment, and she cast her lot with the conspirator and his comrades. She was a constant visitor at the county jail, frequently accompanied by her mother and sometimes by her father. After his conviction she announced that Spies and she were to be married, but this caused a further protest. Sheriff Matson promptly declared that no marriage should take place between the two while Spies was in his custody, and thereafter Miss Van Zandt was placed under the strictest surveillance whenever she visited her affianced. But on January 29, 1887, a marriage by proxy was performed by a justice of the peace between her and Chris Spies, a brother of the doomed man. The ceremony was illegal, but the Anarchists considered it binding.

*Albert R. Parsons* was born in Montgomery, Ala., in 1848, and at the age of five his brother, Gen. W. H. Parsons, of the Confederate army, took his education in charge at his home in Tyler, Texas. When young Parsons was eleven he learned the printer's trade, and finally drifted into the service of the Confederate army. After the war he became editor of a paper at Waco and at Houston, Texas. He identified himself with the Republican party, and, taking an



of a bomb. It was not charged that any of the accused threw the bomb with his own hands. There are sixty-nine counts in the indictment. Some of the counts charge that the eight

active part in politics became Secretary of the State Senate under the Federal Government. In 1872 he married a mulatto at Houston, and, being discarded by his brother and friends, he emigrated with her to Chicago in 1873. No sooner had he reached Chicago than he joined the Socialists. He worked for a time as a newspaper compositor, but his radical ideas and obtrusive arguments prevented him from holding any position permanently. He eventually became editor of the *Alarm* and depended on his Anarchist friends for a livelihood. He was always active at their meetings, both secret and public, and paraded himself as a labor agitator. Mrs. Parsons had early identified herself with her husband's views, and was one among several others to organize a women's branch of the Anarchists. She made an effective address, and always took a leading part in extending the membership of her union. After her husband's execution she appeared on the stump in various parts of the United States, and was even more violent than before.

*Adolph Fischer* was born in Germany, was twenty-seven years old and married; he had been in the United States about thirteen years. He had learned the printer's trade in Nashville, Tenn., working for a brother who conducted there a German paper. Subsequently he acquired an interest in a German publication at Little Rock, Ark., and in 1881 he moved to St. Louis, where he worked at the case and where he became known for his extreme ideas on Socialism. Later he found his way to Chicago, where he became associated with Engel in the publication of a German paper, the *Anarchist*, but as this did not live long, he became a compositor on the *Arbeiter Zeitung*. Wherever he was he always talked Anarchy and showed a most implacable hatred of existing society.

*George Engel* was born in Kassel, Hesse, Germany, in 1839. In 1872 he came to America, and afterward to Chicago, working as a painter. That year he was a candidate for the position of West Town Collector on the Socialistic ticket. In the spring of 1880 he took charge of the business management of the *Arbeiter Zeitung*, shortly afterward assuming the position of editor.

*Louis Lingg* was the youngest of the Anarchists, being only twenty-one years old, having been born in Baden, Germany, in 1864. He secured a common school education in Germany. After leaving his native country he went to Switzerland, where he remained several years, arriving in America in August, 1885. He was a carpenter by trade and unmarried.

*Samuel Fielden* was born in Dockmorden, Lancashire, England, in 1847, and spent a number of his earlier years in a cotton mill. While thus engaged he became a Sunday-school teacher at the age of eighteen, and some time later branched out as an itinerant Methodist ex-

defendants above named, being present, aided, abetted, and assisted in the throwing of the bomb; others, that, not being present, aiding, abetting, or assisting, they advised, encour-

horter. Some time after (1868) he came to America, settling in New York, and the next year found his way to Chicago. He went to work on the farm of ex-Mayor John Wentworth, but he did not remain there long before he migrated to Arkansas and Louisiana to engage in railroad construction work. In 1871 he returned to Chicago and engaged in manual labor, principally as teamster in handling stone. In 1880 he became a member of the Liberal League, and soon became a rabid Socialist. "From that the step was only a short one to unbridled Anarchy, and the pupil finally became a teacher in advanced theories on the state of society they all sought to inaugurate. Fielden finally became a boon companion of Spies and Parsons, and all the rugged eloquence he could command was given to the cause. He was a more forcible speaker than either of the two just named, and whenever he preached force, as he always did after becoming an Anarchist, his language commanded wider attention and made a deeper impression. Had it not been for his own sincere penitence for his past misdeeds and the intervention of influential friends because of that penitence, he would have died on the gallows. But he recanted at the last moment of hope for clemency, and the governor commuted his sentence to imprisonment for life." Schaack, p. 182.

*Michael Schwab* was born in Kibringer-on-the-Main, Bavaria, in 1853. He attended public school when he was five years old until twelve, and then went to Latin school until sixteen. His mother died when he was eight, and his father when he was two. In 1869 he learned the bookbinder's trade in Wunsenberg. He afterward lived in various German and Bavarian cities and became a Socialist while in Wunsenberg. He came to America in 1879, and Chicago in the same year. After a sojourn in Milwaukee and the West he returned there in 1882, went to the *Arbeiter Zeitung* as a reporter and afterwards became associate editor. "He had seen something of the world as a peripatetic book-binder. Through his varied experience, his nature had grown irritable and crusty, and Anarchy seemed the only thing suited to right the wrongs of mankind. He fell in with the ideas of the cranks in Chicago, and soon wormed himself into an assistant editorial position of \$18 a week on the *Arbeiter Zeitung*. In appearance Schwab was ungainly and ferocious, but when put to the test he was calm and mild as a lamb. The only thing really vicious about him was in his incendiary writings and speeches. He aimed with his limited capacity to be a great leader, but the moment he got into the clutches of the law and found himself in peril of his life he retracted everything which he had so persistently and stubbornly advocated. His new troubles brought out the fact that he had written and spoken simply for the money

aged, aided and abetted such throwing. Some of the counts charge that said defendants advised, encouraged, aided and abetted one Ruolph Schnaubelt in the perpetration of the crime; others, that they avised, encouraged, aided, and abetted an unknown person in the perpetration thereof.

The Illinois statute upon this subject, upon which the indictment is framed, is as follows (chap. 38, div. 2 secs. 2, 3):

"Sec. 2. An accessory is he who stands by, and aids, abets, or assists, or who, not being present aiding, abetting, or assisting, hath advised, encouraged, aided, or abetted the perpetration of the crime. He who thus aids, abets, assists, advises or encourages, shall be considered as principal and punished accordingly.

"Sec. 3. Every such accessory . . . may be indicted and convicted at the same time as the principal or before or after his conviction, and whether his principal is convicted or amenable to justice or not, and punished as principal."

All the prisoners with the exception of *Parsons* appeared in court and pleaded *not guilty*.

*Julius S. Grinnell*,<sup>5</sup> States Attorney; *Francis W. Walker*,<sup>6</sup>

that was in the business, and not because he sincerely believed in the theories he preached. He was at all times a supple tool in the hands of Spies and Parsons." Schaack, p. 165.

*Oscar W. Neebe* was born in New York City of German parents, in 1850. In 1865 he came to Chicago, where he worked at his trade of tinsmith. In 1870 he went to New York, and from there to Philadelphia, where he remained two years, returning to Chicago in 1875, where he established a prosperous business selling yeast to grocers.

<sup>5</sup> GRINNELL, JULIUS SPRAGUE. (1842-1898.) Born Messena, N. Y.; educated in schools of his native town and at Potsdam Academy; graduated Middleburg (Vermont) College, 1866; studied law in Ogdensburg, N. Y., and was admitted to practice, 1868; moved to Chicago, 1870; City Attorney 1879, 1881, 1883; States Attorney, 1884; Judge Superior Court, 1887; resigned 1891 to become Chief Counsel for Chicago City Railway.

<sup>6</sup> WALKER, FRANCIS WILLIAM. Born Chicago, 1856; educated in the Chicago public schools and a private college; studied law Union Coll. of Law (Chicago) and in office of Luther Lafin Mills; Assistant States Attorney under Julius S. Grinnell; County Attorney, 1891-1892.

*Edmund Furthmann,*<sup>7</sup> and *George C. Ingham,*<sup>8</sup> for the People.

*William P. Black,*<sup>9</sup> *William A. Foster, Sigmund Zeisler,*<sup>10</sup> and *Moses Salomon,* for the Prisoners.

June 21

When the court opened today and *Mr. Grinnell* was preparing to call the first jurymen, *Mr. Black* entered the court room in the company of another person.

*Mr. Grinnell.* Your Honor, I see Albert R. Parsons, indicted for murder, and demand his instant arrest.

*Mr. Black.* This man is in my charge and this demand is not only theatrical clap-trap, but an insult to me.

*Parsons.* I present myself for trial with my comrades, your Honor.

JUDGE GARY. The indictment will then be read to you and you will be called upon to plead to it.

<sup>7</sup>FURTHMANN, EDMUND. (1853-1905.) Born Düsseldorf, Germany; located in Chicago; LL.B. Union Coll. Law; admitted to bar, 1874; Assistant States Attorney, 1882; afterwards General Attorney Chicago Traction Company, until his death.

<sup>8</sup>INGHAM, GEORGE COLLINS. (1851-1891.) Born Middletown, Ohio; educated at Shurtleff Coll., at Alton, Ill., and University of Chicago; LL.B. Union Coll. of Law, 1875; admitted to bar, 1875; member firm of Mills, Ingham & Pope; Assistant States Attorney Cook County, 1880.

<sup>9</sup>BLACK, WILLIAM PERKINS. (1842-1916.) Born Smithland, Woodford Co., Ky.; educated Wabash Coll. (Ind.) and studied for the ministry; in 1860 joined 11th Ind. Zouaves under Colonel (afterwards General) Lew Wallace; afterwards recruited a company in Vermilion Co., Ill., and went with them as captain; mustered out Sept., 1864, and spent the year following in the office of the Provost Marshal at Danville, Ill. In 1865 became a law student in the office of Arrington & Dent in Chicago. After being admitted to the bar practiced one year at Danville and returned to Chicago; formed a partnership with Thomas Dent which continued until 1886, from which date he practiced law in Chicago until his death.

<sup>10</sup>ZEISLER, SIGMUND. Born Bielitz, Silesia, Austria, 1860; son of natives of Germany; educated at common schools and Imperial Gymnasium (Bielitz), graduating 1878; graduated University of Vienna (Doctor Juris), 1883; came to Chicago that year; graduated Northwestern Univ. Law School, 1884. Besides practicing law, is a writer in legal and other periodicals on law and political science.

This was done and *Parsons* pleaded *not guilty*.<sup>11</sup>

The examination of the jurors began today and lasted until July 16th.<sup>12</sup>

<sup>11</sup> Bitter as was the public feeling against the closely guarded prisoners who sat at the left of their counsels' table, it was generally understood that none of them had personally committed the crime with which they stood charged, and with the exception of the wild-eyed young degenerate Louis Lingg, there was nothing even suggesting a criminal in their appearance. August Spies, the editor of the anarchist paper *Die Arbeiter Zeitung*, looked like a German student, his little mustache with waxed ends giving him quite a military air. His associate, Michael Schwab, with his long beard and spectacles and intellectual face, might easily have passed for a German professor. Samuel Fielden, the English agitator and anarchist, likewise suggested the student and scholar, and his strong, intelligent face bespoke a man of unusual ability. Adolph Fischer, George Engel, and Oscar W. Neebe, the other defendants, were weak rather than vicious looking, and a glance at their faces was sufficient to suggest how dangerous a little knowledge might prove to their minds. All of these men were foreigners, and some of them did not even speak the English language, but there was absolutely no prejudice against them on this account. Indeed, the public indignation, as far as it was directed against any particular individual centered upon the only American accused of the crime, and the fact that he was not in court was a bitter disappointment to the police, for of all the anarchist leaders he was the only one who had even attempted to escape.

It was not because the authorities had not sought him diligently that Albert R. Parsons was still at large. Never had a fugitive from justice been more systematically hunted, but though the police force of the entire world had been upon his track, they had not run him down. For a time his disappearance was interpreted as a confession of guilt, and it would have surprised no one if he had been indicted as a principal, but the Grand Jury merely named him as an accessory, charged, like the others, with having instigated and encouraged the crime. Meanwhile the search for him continued unabated, for as long as he remained at liberty the record of the police was seriously marred. The day of trial had arrived, however, without the slightest clue to his hiding-place, and not the least damaging circumstances that confronted the seven prisoners on trial was the incriminating flight of the leader who had addressed their meeting only a few minutes before the explosion of the fatal bomb.

Such was the situation when Mr. Grinnell moved his case to trial, but the preliminary examination of talesmen for the jury had scarcely begun before the proceedings were interrupted by the entrance of two men, one of whom was readily identified as Captain

When the twelfth juror, Harry T. Sandford, was called, he was questioned by the counsel on both sides and by the Court as follows (and his examination was on the same lines and illustrates the questions which were propounded to the other 11 jurors and the answers of most of them were very similar.)

*Mr. Black.* Mr. Sandford, have you an opinion as to whether or not there was an offense committed at the Haymarket meeting by the throwing of the bomb? *Mr. Sandford.* Yes. Now, from all that you have read and heard, have you an opinion as to the guilt or innocence of any of the eight defendants of the throwing of that bomb? Yes. You have an opinion upon that question

Black, the missing counsel for the defense. The other was not immediately recognized, and he had almost reached the bench before the prosecutor sprang excitedly to his feet.

"I see Albert R. Parsons, indicted for murder, in this court, and demand his instant arrest!" he shouted.

Captain Black halted, turning savagely upon the speaker.

"This man is in my charge, and such a demand is not only theatrical clap-trap, but an insult to me!" he retorted, indignantly.

Captain Schaack, Inspector Bonfield, and a dozen other detectives and police officials were instantly upon their feet, but the audience, scarcely believing its eyes or ears, sat in dumb amazement as the two lawyers angrily faced each other. Before another word could be uttered, however, Parsons himself set all doubts at rest. "I present myself for trial with my comrades, Your Honor," he observed, with perfect calmness. If Judge Gary did not entirely retain his composure, he at least gave no outward evidence of astonishment. "You will take a seat with the prisoners, Mr. Parsons," he directed, as though nothing unusual had occurred, and immediately instructed the counsel to prepare the necessary papers, allowing the new defendant to enter a plea and stand trial with the others. An eighth chair was thereupon added to the prisoners' row, and Parsons was soon shaking hands and conversing with his co-defendants, while his lawyers complied with the legal formalities, and in a few minutes the great case was again under way.

Whatever may be thought of the strategic expediency of Parsons' move—and there is strong evidence that it was positively disapproved by at least one of his counsel—there can be no question that it displayed courage and unselfishness of a high order. Had he continued in hiding until a jury had been empaneled, he would have secured the immense advantage of a separate trial after the public clamor had been satisfied or diminished, without depriving the other defendants of the benefit of his presence or his testimony. Mr. Foster urged this course, pointing out the danger of a trial with seven other persons, where all sorts of testimony would be admitted, and the innocent be likely to suffer with the guilty, but his advice was disregarded. Parsons deliberately chose to share the hazard of his friends' fortunes, and in so choosing it cannot be

also? I have. Now, if you should be selected as a juror in this case, to try and determine it, do you believe that you could exercise legally the duties of a juror,—that you could listen to the testimony, and all of the testimony, and the charge of the court and after deliberation return a verdict which would be right and fair as between the defendants and the People of the State of Illinois? Yes, sir. You believe that you could do that? Yes, sir. You could fairly and impartially listen to the testimony that is introduced here? Yes. And the charge of the court, and render an impartial verdict, you believe? Yes. Have you any knowledge of the principles contended for by socialists, communists, and anarchists? Nothing except what I read in the papers. Just general reading? Yes. You are not a socialist, I presume, or a communist? No, sir. Have you a prejudice against them from what you have read

denied that he displayed a fortitude and devotion well worthy of respect.

Such, however, was not the opinion of Chicago, where his return was interpreted as further evidence of his notorious contempt and defiance of the law, and the fact that he was an American deepened the feeling against him. But if, as has been claimed, he was unaware that the public indifference to anarchy had given place to detestation of its teachings, the examination of the citizens summoned for jury duty must have completely disillusioned him. Certainly no court record in the United States reveals a deeper or more wide-spread public prejudice than that disclosed by the sworn testimony of the talesmen in this case. Hour after hour passed without the discovery of even one candidate fitted for dispassionate service, and panel after panel of prospective jurymen was exhausted with like result. Days passed without much better success and the days stretched into weeks. "Decisive Battles of the Law." By Frederick T. Hill. New York and London. Harper & Bros. 1907.

<sup>12</sup> Maj. James H. Cole, the first juror, was selected June 23d; S. C. Randall and Theodore Denker on June 25th; C. B. Todd on June 26th, and Frank S. Osborne, July 4th. Andrew Hamilton and Charles H. Ludwig were added to the panel July 4th, and J. H. Brayton July 9th; A. H. Reed was added to the list five days later and John B. Greiner and G. W. Adams, July 15th. July 16th the panel was completed by the acceptance of H. T. Sandford.

Nine hundred and eighty-one men were called into the jury box and sworn to answer questions. Each one of the eight prisoners was entitled to a peremptory challenge of 20 jurors, making the whole number of peremptory challenges allowed to the defense 160. The State was entitled to the same number. 757 were excused upon challenge for cause; 160 were challenged peremptorily by the defense, and 52 by the State.

Of the 12 jurors who tried the case, 11 were accepted by the defense.

in the papers? Decided. Do you believe that that would influence your verdict in this case, or would you try the real issue, which is here as to whether these defendants were guilty of the murder of Mr. Degan or not; or would you try the question of socialism and anarchism, which really has nothing to do with the case? Well, as I know so little about it in reality at present, it is a pretty hard question to answer. You would undertake—you would attempt, of course—to try the case upon the evidence introduced here upon the issue which is presented here? Yes, sir. Well, then, so far as that is concerned, I do not care very much what your opinion may be now, for your opinion now is made up of random conversations and from newspaper reading, as I understand? Yes. That is nothing reliable. You do not regard that as being in the nature of sworn testimony at all, do you? No. Now, when the testimony is introduced here and the witnesses are examined, you see them and look into their countenances, judge who are worthy of belief and who are not worthy of belief; don't you think then you would be able to determine the question? Yes. Regardless of any impression that you might have, or any opinion? Yes. Have you any opposition to the organization by laboring men of associations or societies or unions so far as they have reference to their own advancement and protection and are not in violation of law? No, sir. Do you know any of the members of the police force in the city of Chicago? Not one by name. You are not acquainted with anyone that was either injured or killed, I suppose, at the Haymarket meeting? No. If you should be selected as a juror in this case, do you believe that, regardless of all prejudice or opinion which you now have, you could listen to the legitimate testimony introduced in court, and upon that, and that alone, render and return a fair and impartial, unprejudiced, and unbiased verdict? Yes.

*Mr. Grinnell.* Upon what is your opinion founded,—upon newspaper reports? Well, it is founded on the general theory and what I read in the newspapers. And what you read in the papers? Yes, sir. Have you ever talked with anyone that was present at the Haymarket at the time the bomb was thrown? No, sir. Have you ever talked with anyone who professed, of his own knowledge, to know anything about the connection of the defendants with the throwing of that bomb? No. Have you ever said to anyone whether or not you believed the statements of facts in the newspapers to be true? I have never expressed it exactly in that way, but still I have no reason to think they were false. Well, the question is not what your opinion of that was. The question simply is—it is a question made necessary by our statute, perhaps. Well, I don't recall whether I have or not. So far as you know, then, you never have? No, sir. Do you believe that, if taken as a juror, you can try this case fairly and impartially and render a verdict upon the law and the evidence? Yes.

JUDGE GARY. The juror is qualified in my opinion.



*Mr. Black.* We challenge the juror for cause and except to your Honor's ruling.<sup>13</sup>

The following jurors were sworn and took their seats: Frank S. Osborn, 39, b. Columbus, O., dry goods salesman; Major James H. Cole, 53, b. Utica, N. Y., major in Civil War, bookkeeper in insurance company; Scott G. Randall, 23, b.

<sup>13</sup> In affirming the conviction the Supreme Court said:

It is objected that Sandford had formed such an opinion as disqualified him from sitting upon the jury. It is apparent from the foregoing examination that the opinion of the juror was based upon rumor or newspaper statements, and that he had expressed no opinion as to the truth of such rumor or statements. He stated upon oath that he believed he could fairly and impartially render a verdict in the case in accordance with the law and the evidence. That the trial court was satisfied of the truth of his statement would appear from the fact that the challenge for cause was overruled. Therefore the examination of the juror shows a state of facts which brings his case exactly within the scope and meaning of the third proviso of the fourteenth section of chapter 75, entitled "Jurors," of our Revised Statutes. That proviso is as follows: "And providing further that, in the trial of any criminal cause, the fact that a person, called as a juror, has formed an opinion or impression based upon rumor or upon newspaper statements (about the truth of which he has expressed no opinion) shall not disqualify him to serve as a juror in such case, if he shall, upon oath, state that he believes he can fairly and impartially render a verdict therein in accordance with the law and the evidence, and the court shall be satisfied of the truth of such statement."

The expressions of Sandford in the case at bar as to the opinion formed by him are not so strong as those used by Gray in the *Wilson Case*, 94 Ill. 299, in regard to his opinion. Sandford's impressions were not such as would refuse to yield to the testimony that might be offered, nor were they such as to close his mind to a fair consideration of the testimony. They were not "strong and deep impressions," such as are referred to by Chief Justice Marshall when he said, upon the trial of Aaron Burr for treason: "Those strong and deep impressions which will close the mind against the testimony which may be offered in opposition to them, which will combat that testimony and resist its force do constitute a sufficient objection to a juror."

The juror Sandford further stated that he had a prejudice against socialists, communists, and anarchists. This did not disqualify him from sitting as a juror. If the theories of the anarchists should be carried into practical effect, they would involve the destruction of all law and government. Law and government cannot be abolished

Erie County, Pennsylvania, salesman; Alanson H. Reed, 49, b. Boston, Mass., member commercial firm; James H. Brayton, 40, b. Lyons, N. Y., principal Webster School; Andrew Hamilton, hardware merchant; George W. Adams, b. Indiana, dealer in paints; John B. Greiner, 25, b. Columbus, O., stenographer; Charles B. Todd, 47, b. Elmira, N. Y., clothing salesman; Theodore E. Denker, 27, b. Wisconsin, shipping clerk; Harry T. Sandford, 27, b. New York City, railroad clerk.

MR. GRINNELL'S OPENING FOR THE PROSECUTION.

July 15.

*Mr. Grinnell.* Gentlemen: For the first time in the history of our country are people on trial for their lives for endeavoring to make Anarchy the rule, and in that attempt for ruthlessly and awfully destroying life. I hope that while the youngest of us lives this in memory will be the last and only time in our country when such a trial shall take place. It will or will not take place as this case is determined.

The State now and at no time hereafter will say aught to arouse your prejudices or your indignation, having confidence in the case that we present; and I hope I shall not at

without revolution, bloodshed, and murder. The socialist or communist, if he attempted to put into practical operation his doctrine of community of property, would destroy individual rights in property. Practically considered, the idea of taking a man's property from him, without his consent, for the purpose of putting it into a common fund for the benefit of the community at large, involves the commission of theft and robbery. Therefore the prejudice which the ordinary citizen, who looks at things from a practical standpoint, would have against anarchism and communism, would be nothing more than a prejudice against crime.

Sandford stated that he would "attempt to try the case upon the evidence introduced here upon the issue which is presented here." The issue presented was whether the defendants were guilty or not guilty of the murder of Matthias J. Degan. Any prejudice against communism or anarchism would not render a juror incapable of trying that issue fairly and impartially. We cannot see that the trial court erred in overruling the challenge for cause of the twelfth juror.

any time during this trial say anything to you which will in any way or manner excite your passions. I want your reason. I want your careful analysis. I want your careful attention. We—my associates and myself—ask the conviction of no man from malice, from prejudice, from anything except the facts and the law. I am here, gentlemen, to maintain the law, not to break it; and, however you may believe that any of these men have broken the law through their notions of Anarchy, try them on the facts. We believe, gentlemen, that we have a case that shall command your respect, and demonstrate to you the truthfulness of all the declarations in it, and, further, that by careful attention and close analysis you can determine who are guilty and the nature of the crime.

On the 4th of May, 1886, a few short weeks ago, there occurred, at what is called Haymarket Square, the most fearful massacre ever witnessed or heard of in this country. The crime culminates there—you are to find the perpetrators. The charge against the defendants is that they are responsible for that act. The testimony that shall be presented to you will be the testimony which will show their innocence or their guilty complicity in that crime.

We have been in this city inclined to believe, as we have all through the country, that, however, extravagantly men may talk about our laws and our country, however severely they may criticise our Constitution and our institutions; that as we are all in favor of full liberty, of free speech, the great good sense of our people would never permit acts based upon sentiments which meant the overthrow of law. We have believed it for years; we were taught it at our schools in our infancy, we were taught it in our maturer years in school, and all our walks in life thereafter have taught us that our institutions, founded on our Constitution, the Declaration of Independence, and our universal freedom, were above and beyond all Anarchy. The 4th of May demonstrated that we were wrong, that we had too much confidence, that a certain class of individuals, some of them recently come here, as the testimony will show, believe that here in this country our

Constitution is a lie. Insults are offered to the Declaration of Independence, the name of Washington is reviled and traduced, and we are taught by these men, as the testimony will show, that freedom in this country means lawlessness and absolute license to do as we please, no matter whether it hurts others or not. In the light of the 4th of May we now know that the preachings of Anarchy, the suggestions of these defendants hourly and daily for years, have been sapping our institutions, and that where they have cried murder, bloodshed, Anarchy and dynamite, they have meant what they said, and proposed to do what they threatened.

We will prove, gentlemen, in this case, that Spies no longer ago than last February said that they were armed in this city for bloodshed and riot. We will prove that he said then that they were ready in the city of Chicago for Anarchy, and when told, by a gentleman to whom he made the declaration, that they "would be hung like snakes," said—and there was the insult to the Father of our Country—then he said George Washington was no better than a rebel, as if there was any possible comparison between those declarations, between that sentiment of Washington's and his noble deeds, and the Anarchy of this man. He has said in public meetings—and the details of them I will not now worry you with—he has said in public meetings for the last year and a half, to go back no further—he and Neebe and Schwab and Parsons and Fielden have said in public meetings here in the city of Chicago that the only way to adjust the wrongs of any man was by bloodshed, by dynamite, by the pistol, by the Winchester rifle. They have advised, as will appear in proof here, that dynamite was cheap, and "you had better forego some luxuries, buy dynamite, kill capitalists, down with the police, murder them, dispose of the militia and then demand your rights." That is Anarchy.

On the 11th day of October, 1885, in a prominent public hall upon the West Side, August Spies, the defendant in this case, and his confreres there, introduced a resolution at a public meeting, in which he said that he did not believe that the eight-hour movement would do the laboring man any

good. We will prove in this case that he has always been opposed to the eight-hour law. That is not what he wants. He wants Anarchy. These defendants that I mentioned passed a resolution, which we shall offer in evidence here, and it shall be read to you later—to the effect that the laboring men must arm, must prepare themselves with rifles and dynamite. When? By the 1st of May, 1886, because then would come the contest.

I will prove to you that Parsons—be it said to the shame of our country, because I understand that he was born on our soil—that Parsons, in an infamous paper published by him, called the *Alarm*, has defined the use of dynamite, told how it should be used, how capitalists could be destroyed by it, how policemen could be absolutely wiped from the face of the earth by one bomb; and further has published a plan in his paper of street-warfare by dynamite against militia and the authorities.

Gentlemen, leaders of any great cause are either heroes or cowards. The testimony in this case will show that August Spies, Parsons, Schwab and Neebe are the biggest cowards that I have ever seen in the course of my life. They have advised the use of dynamite and have advised the destruction of property for months and years in the city of Chicago, and now pitifully smile at our institutions, as they have through their lives—and, like cowards contemplating crime, they sought to establish an alibi for the 4th of May, of which I will speak directly.

I will prove to you further that in January last August Spies told a newspaper reporter of integrity, honesty and fidelity that they were going to precipitate the matter on or about the 1st of May; that he told this man how they could dispose of the police, and in that connection he told that reporter that they would arrange it so that their meeting should be at or near the intersection of two streets. Having this as Randolph street and Desplanes (pointing on map), not calling it any particular name, and that he would have a meeting in which there should be assembled large bodies of laboring men, of which he falsely claims to be the exponent;

that they would be located just above the intersection of the streets; that he and his dynamiters would be there; that they would be provided with dynamite bombs at the place of meeting; that they would hold a meeting there; that the police or the militia would walk up towards them; that when they got up there their dynamite-throwers would be situated on different sides of the street near the walks; that when they proceeded up here they would throw the dynamite into their ranks, clean them out and take possession of the town. "But," said the reporter to him, "Mr. Spies, that sounds to me like braggadocia and vamping nonsense." That is, gentlemen, what it has sounded to us for years. Let it sound no longer like that to us. Spies said to him, red in the face and excited: "I tell you I am telling the truth, and mark my words, that it will happen on or about the 1st of May, 1886." And the reason he was so ready to say so was because he believes our Constitution is a lie, our institutions are not worthy of respect, and he desires to pose as a leader, although in fact a coward.

That is not all, Gentlemen. Mr. Spies at that interview at that time handed that gentlemanly reporter—and I will commend him to you now, whatever may be your notion of newspaper men. Look at that man when he goes upon the stand and judge him by his words and by his appearance. He, Spies, did more than what I have said. At that time he handed to the newspaper reporter a dynamite bomb, empty—almost the exact duplicate of the bomb Lingg made which killed the officers; handed it to this witness and said to him: "These are the bombs that our men are making in the city of Chicago, and they are distributed from the *Arbeiter Zeitung* office, because the men who make them have not the facilities for distributing them, and we distribute them here."

Those are facts that will be proven here.

I want to suggest to you now, gentlemen, this is a vastly more important case than perhaps any of you have a conception of. Perhaps I have been with it so long, have investigated it so much, come in contact with such fearful and terrible things so often, that my notions may be somewhat exag-

gerated; but I think not. I think they are worse even than my conception has pictured. The firing upon Fort Sumter was a terrible thing to our country, but it was open warfare. I think it was nothing compared with this insidious, infamous plot to ruin our laws and our country secretly and in this cowardly way; the strength of our institutions may depend upon this case, because there is only one step beyond republicanism—that is Anarchy. See that we never take that step, and let us stand today as we have stood for years, firmly planted on the laws of our country.

After teaching Anarchy, bombs, the manufacture of them and everything of that character for months, and I may say for years, here in town, having put the ball in motion, having done everything toward the end they declared should be accomplished—towards the end they sought—then began the numerous conspiracies. The beginning of the whole matter was among the nest of snakes in the *Arbeiter Zeitung* office, and the foundation of the conspiracy, published, notorious and open, was at West Twelfth Street Turner Hall, on the 11th of October last. At that time, on the introduction of that resolution by Spies, it was opposed by one man in the audience, who is a labor agitator, but not an Anarchist—opposed by one man in that audience, and he was denounced; he was told to take a back seat, and in support of the resolution it was there said by Spies—and a man, as I understand, by the name of Belz was chairman—that the time for argument has passed; the only argument by which to meet these things was dynamite and the rifle—by force.

As is well known, requiring no proof, for a long time before, it was arranged by a universal arrangement or consent among all the laboring classes in town that there should be a universal strike for eight hours, to take place on or about the 1st day of May. On the 1st day of May began those strikes. On the 2nd—on the 3d—the 2nd was Sunday—on the 3d day of May, on Monday, you will remember from your reading, as it will appear in proof here, there was difficulty at McCormick's factory down on what they called the Black Road. The fact about that meeting was this: A large number of lumber-shovelers,

or men who work in the lumber-yards, had a meeting appointed to wait on the lumber dealers. There were a great many of them Bohemians, some Germans, and some of other nationalities—mostly embraced in those two nationalities that I first spoke of, but all nationalities represented there. The chief officers and the chief men in the movement were Bohemians. Some of them will be presented to you by us. The committee that was to wait upon the lumber dealers was to report there in an open place called the Black Road, or in that locality, to the meeting, what the lumber dealers proposed. In other words, a peaceful proposition was made by that committee to the lumber men to accede to eight hours, and a meeting was held there; the committee were to come back from the lumber dealers and report to that meeting. Spies and a man by the name of Fehling—who ought also to have been in this indictment, and I will say just a word later about that—one other man whose identity we have not fully established—went down there uninvited by any of that committee, or by the chairman of it—went down there and made an inflammatory speech for the purpose of precipitating that riot. That is the truth. It was precipitated. I am rather inclined to think that some other of these men were there. I am not going to state anything to you here, at any time, in this case, that I do not believe I can prove. I know Spies was there, and spoke from the top of a car. He wrote up the speech later on which I will speak of directly. The president of that organization down there, the laborers, opposed his speaking and informed the people that this man was not one of them, but that he was a Socialist, and they did not want to hear him. He insisted upon speaking, and the friend that was with him has fled the city and does not dare return. That will be in proof. Spies did the unmanly thing that he always does. He exasperated other people to rush on McCormick's regardless of the president of that committee, who desired quiet and peace and desired it honestly, although he was in favor of eight hours. But Spies is not anxious for eight hours. We will prove that in this case. He does not want eight hours. If the laboring men—if the bosses and employers in the city of Chicago on



the 1st day of May had universally acceded to the eight-hour project, Spies was a dead duck; they would have had no further use for him, and he didn't want it. Therefore he went down there and exasperated the people, and he made a speech. The police didn't come on the ground until after McCormick's was attacked, and until after stones and bombs were used, or pistols and lead against McCormick's factory. What does Spies do, this redoubtable knight? He runs away and gets home just as soon as he can. He takes a car and comes north. I will say nothing more about that meeting for the present. Let us follow Spies. Now, mind you, he saw trouble. He had exasperated this crowd to attack McCormick's; they did attack McCormick's, and stones were thrown by the mob at McCormick's men—some of them—they are called scabs; they didn't happen to belong to any union. Of course my opinion about that may be different from some of yours; I will not criticise. I believe one man is just as good as another, whether he belongs to a union or not. If he is an honest man and desires to work, I think he ought to be permitted to work. But those fellows didn't belong to the union. They swam across the river, got away the best they could, saved their lives. But what does Spies do? He rushes away as soon as he can, when he sees the starting of the difficulty; when he has got everybody inflamed into frenzy and madness he quietly gets out to save his august person; he quietly gets out and goes away. That is not all. He lands that afternoon at the corner of Desplaines and Lake, where there was a crowd of other men, laborers meeting there, and pronounces a lie by telling them that "twelve or fourteen of your brothers have been killed at McCormick's, and by the bloodhounds, the police." Spies knew as well as anything that he ever knew in his life that he was uttering a falsehood. He knew, if he knew anything, that, so far as his observation was concerned, not a man had been killed—not a single man had been killed—and he inflamed the people there by his suggestion, heated as he was and showing excitement, coming in there at Desplaines and Lake at that meeting, inflaming those people so that they

were then ready to go with the torch and the sword and level everything before them.

That is not all. He left there about four o'clock in the afternoon, perhaps between four and five, and went to this nest of treason and Anarchy, No. 107 Fifth avenue, and there about five o'clock arrived, heated, excited, and told his men not to stop work, that he wanted to use them. What did he do? He then and there wrote what is called the "Revenge" circular. It is written in English and in German. The English part is tame, more tame than the German—and he knew what he was doing then; there was a plan in that. We have the circular as printed, which will be presented to you. We have in addition to that the type from which it was printed; we have in addition to that the manuscript from which the type was set. The manuscript is in Spies' handwriting! That "Revenge" circular, gentlemen, perpetrated another lie. It said that "six of your brothers have been killed at McCormick's." He decreased it a little. That "Revenge" circular was hurriedly passed out to all the German settlements of the town and everywhere, by every possible means. Neebe distributed them; others distributed them. They were "revenge;" revenge for what? Revenge for the declared murder of the brothers of the laboring men at McCormick's Monday afternoon—when he had no knowledge that a single man was killed. I have since learned and shall prove that one man did die days or weeks afterwards from wounds he did receive there, and only one.

I want to suggest another thing to you here. It will appear in proof—because we have had the German part of that circular translated—that the German part of that circular is the most infamous thing that ever was in print. The translation of the German part of that circular is not like the English part. A man picking up the circular who was an English scholar—as I remember, the English part of the circular comes first, and following that is the German part—and any man, even some of these German newspaper men, would pick that up, and the first thing they would read would be the English part, not the German. They would read the English hastily

through and they would say, "That's some of Spies' vamping nonsense again; nothing very serious about it, but bad—bad taste—bad judgment in inflamed times." But the revenge circular as printed in German is altogether a different thing. It is not only treason and Anarchy, but a bid to bloodshed, and a bid to war. Anybody reading the English part of that circular would drop it—even the Germans. And the German newspapers until afterwards did not perceive the dissimilarity between the two, the English and the German. Now, where is this matter read? It is fortunate for the English-speaking people that defendants embrace only two of that class; one of them was born in this country, the other in England. That circular was read among the Germans. That circular was spread throughout the western part and the northern part of the city of Chicago and in other places, at the instance of Spies, who had it circulated himself. "Revenge on the bloodhounds, the police." For his life, in regard to those who were killed, he could not have known whether anybody was killed or not, because he took care of his royal person so speedily after the difficulty at McCormick's that he had no chance to know whether anybody was killed, and he took good care to see that he was not hurt. So much for the "Revenge" circular.

Now, gentlemen, we are getting down to the 4th of May. There is more in it than this. Monday was the 3d day of May; Tuesday was the 4th, the day the bomb was thrown. Everything was ripe with the Anarchists for ruining the town. Bombs were to be thrown in all parts of the city of Chicago. Everything was to be done that could be done to ruin law and order. I wish to say right here, gentlemen, that the proof in this case will develop a strange state of facts in regard to the complicity of others in this matter, and in that particular perhaps there ought to be some apology for myself. The conspiracy was so large, the number of criminals interested in that conspiracy so appalling, that I distrusted my own judgment, and, whereas in my soul I believed that at least thirty men and perhaps more should have been indicted for murder, the developments in the case were of that kind, when the

grand jury was in session, that the facts could not all clearly be known. And further, there was that feeling and inspiration in the matter, if you please, that the leaders, the men who have incited these things, the men who have caused this anarchy and bloodshed here, and who seek for more—that they should be picked out and, if possible, punished and blotted out.

The *Arbeiter-Zeitung*, the paper itself—we shall attempt to show you in proof here its circulation, or its sworn issue for a year. We will have them translated for you. We will also attempt to show to you from the *Alarm*, the English organ of the Anarchists—that is what it is called, just think of it—the English organ of the Anarchists, published by the redoubtable and courageous Parsons. We will show you in proof its writings and its sentiments, its invitations to Anarchy, to bloodshed, to the throwing of bombs, and his advice to people how to make bombs.

If I prove only this that I have stated to you, it seems to me that from every principle of law and evidence, from every principle of justice, the men whose names I have mentioned should be punished.

But one step more. This was Monday night, remember, that Spies wrote the "Revenge" circular. That was not all he wrote. He himself wrote the account of his speech; wrote the account of the McCormick riot, wrote his notions about it, and that is in his handwriting. We have the manuscript. And in that he said this, gentlemen—that "so far as the McCormick matter was concerned it was a failure, and if there only had been one bomb the result might have been different." The one bomb at least was supplied by his inflammatory utterances the next night.

On Monday evening, after Spies had inflamed these people up there—on Monday in the daytime, rather, appeared in the *Arbeiter-Zeitung*, a newspaper published at 107 Fifth avenue—it is a four-page paper, it has been constantly and carefully read in the progress of this trial by the gentlemen seated over there in a row—in the *Arbeiter-Zeitung* appeared on Monday, in a column devoted to editorial notices, a secret word for the

meeting of the armed men. That was in German—the letter “Y,” called ypsilon in German—“Ypsilon, come Monday night.” Ypsilon was the secret word agreed on by the armed men to meet in secret session, when they saw printed in this treasonable sheet that secret word. As I am informed and believe from the proof, Balthasar Rau wrote that secret word. The armed men of the Anarchists, to be brief, are those of the Anarchists who are willing to throw bombs and fire pistols behind people’s backs. It is divided into groups. Why, all their literature from Pittsburg to San Francisco, including the pen of Neebe, Spies, Schwab and Parsons—all of them have advised how to make up groups, based upon the Anarchistic notions. On that page appears this secret word. Balthasar Rau is the confidential friend of Spies, works in their office; he is not an editorial writer, he is not a writer at all, unless he occasionally essays to say something in print. I do not know, but I believe that that is his writing, the letter “Y” in German—“Come Monday night.” That is all there was of it. What does it mean? Pursuant to that secret word, on Monday night—that is the same night that Spies got back from McCormick’s—on that night the armed men did assemble pursuant to “Ypsilon, come Monday night,” and they knew where to go. They went to Grief’s Hall. Grief’s Hall is on Lake street, just east of Clinton. This is Zepf’s Hall; the name will be mentioned to you. Here is Desplaines Street Station, so that you can keep in your mind from this map the idea. Here is Desplaines Street Station; north up here to Lake, Zepf’s Hall; east, Greif’s Hall. They met. Greif’s Hall is a four-story building, as I remember, a family lives in it, there is a saloon, and down in the basement is a place for truck and one thing and another, and also a rough-and-ready place for meetings. The armed men were there; Fischer was there; Lingg was there; Engel was there. The armed men met there with others—other armed men than those that I have mentioned.” They pass into Grief’s Hall; they say to Mr. Greif: “Have you a hall we can take?” He said: “No, my halls are all occupied;” one kind of labor association was meeting in one hall, and another in another; but he said,

"If you want the basement"—and I have a plan and map of the basement—"if you want the basement, go down stairs and hold your meeting." So these men, the numbers of them variously estimated from thirty to sixty, meet in that place. Among them were Fischer, Lingg, Engel and Schnaubelt. Schnaubelt is in this indictment, and not here. He has run away. These men met in this hall underneath the saloon, a dingy and dark basement—the only proper place for conspirators—by the light of a dingy lamp—and they held an organized meeting. The plan of warfare was devised—not for the next night. I will explain that. But for some night. Engel, a man who is gray, has been in this country some years and talks some English—he understands me, and laughs and smiles at every word I utter—Engel was at that meeting that night, and told the plan. I am going to be brief about the recitation of that plan. That was the most fearfully declared plan that I ever heard in my life. It meant destruction to this town absolutely if this programme had been carried out. Engel said: "When you see printed in the *Arbeiter-Zeitung*, under the Letter-box, the word 'Ruhe,' that night prepare for war." "Ruhe" means "rest," "peace." The manuscript for that is in our possession and is in the handwriting of Spies. That word on Tuesday morning appeared in the *Arbeiter-Zeitung* and in a double lead, with an emphasis under it, before it and behind it. It meant "war." They understood it; and Engel refers to Fischer in the meeting and he says: "Is not this the order of the Northwest group?" That is another group for conspiracy and treason. Fischer said "Yes." As I am informed, Fischer undertook to carry the word back to the *Arbeiter-Zeitung* office and have it inserted. Fischer was the foreman of the *Arbeiter-Zeitung* office at that time. He carried the word back, I assume. Spies wrote it out, double-leaded it, made it emphatic, and they were ready for war.

But that was not all. Somebody had to make the bombs. Lingg was there, and he said that he would make the bombs. He was the bomb-maker of the Anarchists, and we have found and traced to him at least twenty-two of these infernal ma-

chines, one of which passed from his hands to the man who threw it at the Haymarket Square. I will prove to your absolute satisfaction that Lingg made the bomb that killed the officers, and will show to you that it was his bomb, and his manufacture alone. Lingg lived at No. 442 Sedgwick street, occupied a room in Seliger's house. Seliger is in this indictment for murder also. He is not on trial. I am not yet prepared to say whether the State will use him as a witness or not. I will have a suggestion to make on that subject directly.

Lingg was to make the bombs. Engel devised the plan and deliberately told him over and over so that there would be no mistake. Now, what was the plan? That these conspirators should proceed to Lingg's house that next night, or before night, and obtain from Lingg the bombs. He had already sixteen halves, or eight whole bombs. But he wanted more, and they were to be filled with dynamite on Tuesday afternoon.

And what next? Then these people were informed where they could obtain them, and he was to go, as he did, in the evening, or between seven and eight o'clock, to Neff's Hall, at No. 58 Clybourn avenue. They went to work. There Seliger helped fill the bombs that afternoon. Lingg was there. Lingg left in the afternoon. He didn't stay there through it all, but came back again. I do not think that Lingg was at the Haymarket that night; he may have been; I don't think he was. His part on the programme—part of it had been performed—was to furnish the bombs and do the work elsewhere.

Now, gentlemen, just look at this plan, and this is the plan that Engel told them should be performed. They were to get these bombs; certain of them were to be at the Haymarket Square, where this meeting was; and in this meeting, mind you, in this conspiracy meeting the programme was that there should be at least twenty-five thousand laboring men present; that they would not hold the meeting down on the square, but that they would get up in the street, because they were out in a great open place there, the police could come down on them and clean them all out; but they must get back where the alleys were, instead of holding the meeting down here where

it was advertised. You see there are two blocks here. Instead of holding the meeting on this broad spot here (indicating on the map), they were to hold it up here; and that very thing was discussed down there that night in the conspiracy meeting, as to the feasibility of holding it here where the police could corner them. Then these individuals with the bombs were to distribute themselves in different parts of the city. They were to destroy the station houses; they were to throw bombs at every patrol wagon that they saw going toward the Haymarket Square with police officers. They expected there would be a row down there at the Haymarket Square, of course. There was going to be one bomb thrown there at least, and perhaps more, and that would call the police down; but the police must be taken care of and must not be permitted to go, and they were to be destroyed, absolutely wiped off from the earth by bombs in other parts of the city. And Lingg went around with bombs in his pocket that night and desired to throw them at a patrol wagon and was only restrained by his friends. And they were to build a fire up toward Wicker Park—some building was to be set on fire for the purpose of attracting the police in that direction and scattering them about. Others were to take other parts of the city and burn them so that they would be destroyed.

Now, this sounds as if it was a large story. But that is what Spies had been talking for years; that is what Parsons had been talking for years; that is what he came back here so courageously, on the arm of the learned counsel on the other side, to hear again in court.

That meeting that night was fruitful of great results. A bomb was thrown at the Haymarket, and seven killed and many others injured. It is not necessary for me to go into any more of the details of that conspiracy. It was carried out to the letter.

Now, there is one other little step in this case, gentlemen, that I wish to bring to your attention. When that "Revenge" circular was circulated, Fischer, immediately thereafter, and at the conspiracy meeting—Fischer is the foreman printer of the *Arbeiter-Zeitung*, and the immediate friend of Spies, and



all these people—Fischer was to advertise, to see that the proper number of people came to that meeting, and he got up an advertisement, and it was printed. He ordered twenty thousand. That advertisement will be presented to you in the proof. That advertisement called for "Revenge" and "A big meeting of the workingmen at the Haymarket Square on Tuesday night." Now, you see, the "Ruhe" had appeared. The conspiracy was all complete; everything was arranged; there was only one step more to make—to get the laboring men there—because, thank God, all the laboring men were not in this conspiracy. A very few were in it. It is to their credit, gentlemen; and in my investigation in this case I have more respect for the laboring man than I had before. The laboring man as a class is an honest man, and when he saw the "Revenge" circular and the call "to arms" he stayed away. Fischer had the advertisement printed, and the last sentence is this: "Workingmen, come armed." But that was a little too much for Spies; that was too close home. After about five thousand of these circulars were printed, Spies orders that sentence stricken out; but the whole twenty thousand were distributed, and with Spies' knowledge. Spies was preparing the alibi.

On the evening of Tuesday, at 107 Fifth avenue, there was a meeting of these conspirators, of these Anarchists, of what is called the American group, that Parsons and Fielden and, I suppose, Spies belong to, and some others. That was held at 107 Fifth avenue. That is at the *Arbeiter-Zeitung* office. They were there on Tuesday night. Parsons was on Halsted street, to be sure, but yet seemed anxious to get away and go down to this other meeting on the South Side. He went down there. The meeting was advertised for a large number of laboring men. The laboring men did not materialize to any large extent. Between Halsted and Desplaines there were hundreds of people walking backwards and forwards, wondering why the meeting did not take place. It was advertised for half-past seven; they expected to precipitate the matter at half-past seven, because, pursuant to "Ruhe" and the other declarations, and pursuant to Engel and Lingg and Fischer's

arrangement at the conspiracy meeting, they were to begin their work in the other parts of the city about eight o'clock, as they expected the police would precipitate the difficulty—they would precipitate the difficulty by the police coming about eight, or between half-past seven and eight. Good speakers were advertised, yet no names given. Spies went over there that night himself, wandered around, seemed careless, walked over here with his friend Schnaubelt, up to the other street—with Schwab, too. Schwab went away finally and went up to Deering. They marched backwards and forwards there, and finally Spies comes back to the corner here and opens the meeting, and says, when he opens it: "We will not obstruct that road on Randolph street, but will go up here." So he got where he had always said they would get, just above the intersection of the streets. They got up there on the wagon, and Spies opened the meeting.

Now, gentlemen, we have got down to the meeting. I have endeavored to give you, in a kind of historical way, how this thing leads up to, without saying specifically, the proof. I have told you that we would prove declarations of these men, time out of number, about dynamite and bombs, and the destruction of property and the destruction of the police. That we will attempt to do. There is no need of my specifying or saying what each individual witness will say.

Neebe has upheld bloodshed and riot time and again, although from all the inquiries put to you it would seem as if he was known as one of these peaceable, peaceful, quiet labor organizers.

The laboring men did not come to any large extent. There probably were not two thousand men there at any time, even early in the evening. There were not enough there to get up a riot. They could not get up a riot with such a small number as that, and they were compelled to have somebody speak to keep what they had; they were dissolving—going away. Now, Spies was there. He is the man, I think, that knew of "Ruhe," I think that he himself will state—I think others will state—that they knew of all the circumstances about the "Ruhe," and about what they were going to do. I think the proof will

show that he knew of the whole conspiracy. He did not stop it. They will undertake to show that he tried to. Now, I want you to watch that carefully. We will have something to say on that subject as the basis of all this. There never was a great criminal in the world, especially if he was a coward, but what, if he undertook to commit a great crime and wanted to conceal himself, he prepared an alibi. Parsons, Feilden, Schwab, Neebe and Spies prepared that alibi. They were going to let these three other men suffer, let the man that threw the bomb suffer; but they, who had been teaching dynamite for years, asking people to throw bombs for years—they, after the bomb had been thrown, were going to say that they were not liable at all.

Now, at that meeting, Spies got back up here and opened the meeting. There was some significance in the very way he opened it. We will have it all here. Fortunately, one of the newspaper reporters—Mr. English, of the *Tribune*—stood there with his overcoat on, with his hands in his pocket, not daring to take his paper out, and took a minute of everything that was said—wrote in shorthand, with his hand in his pocket, what they said, as long as he could. Spies opened the meeting up here near the alley. A wagon was standing there upon which they stood and from which they spoke. Spies found that the meeting was going to dissolve; there wasn't going to be any interference by the police to any extent unless they could keep that crowd there. So he sends Balthasar Rau over to the *Arbeiter-Zeitung* office, where the American group were. Now, how did he know that they were over there? They went over to the *Arbeiter-Zeitung* office to get Parsons, Fielden and the rest of them to come over and address the meeting, and they came over, and we will have what they said—where speeches were inflammatory, denunciatory, crying for bloodshed—everything of that character.

Gentlemen, I have called several of these men cowards. The testimony will show that they are. I am rather inclined to think that Fielden, although he is an Anarchist, is the only man in the whole crowd that stood his ground that night.

The history of the throwing of that bomb shows that the

police did not interfere any too soon. Gentlemen, it is our humble opinion, from looking this case all over, that Inspector Bonfield, although it is sad to think that life is destroyed—I think Inspector Bonfield did the wisest thing that he possibly could have done, to have called the police there that night as he did. If he had not, the next night it would have had to be done, or the next, and whereas seven poor men are dead, there would have been instead hundreds, perhaps thousands. I say again, to the credit of Bonfield and the police, I wish it understood that at that meeting it was the wisest thing that ever happened to this town, although cruel as it may seem in the light of the fact that seven died. Hundreds and perhaps thousands were saved. Anarchy had been taught and cried for months; it had almost come with its demoralization, and the strength and courage of the police saved the town.

About ten o'clock, from the reports coming to Bonfield, as will appear in proof, the inflammatory utterances of these American citizens, of these people, had decided Bonfield that the meeting must be broken up. He was wise. He passed down there with his force of police, and gentlemen, not a policeman except the commanding officer in front had a weapon in his hand. They marched down there shoulder to shoulder, covering the whole street, and came to the wagon. Fielden was shouting to the police, talking about the bloodhounds as they advanced, because he was facing them as he spoke. He probably saw them as they turned the corner. They formed here (indicating on the map), in this court back here, and marched into the street at Desplaines, occupying almost the entire width of the street, facing down—what we may call up Desplaines street, north towards where this meeting was. The meeting was held about the vicinity of that alley. This property here, all through there, is Crane's factory—R. T. Crane & Co. Here is an alley that runs in through here. Eagle street is here, and of course here is Lake, and here is Randolph. Fielden was speaking; the police came up to the wagon; Captain Ward stepped up to the crowd and told them that he commanded them, in the name of the people of the State of Illinois, to depart, to leave, to disperse. He made

the ordinary statutory declaration. Fielden stepped from the wagon and said: "We are peaceable," so that it could be heard a long distance around him. At that moment a man, who a moment before had been on the wagon, stepped to the corner of that alley, lighted the bomb and threw it into the police. Fielden stepped from the wagon and began firing. He is the only one, I told you, of the crowd, that has got any of the elements of the hero in him; he was willing to stand his ground. The others fled. Parsons never did a manly thing in his life, and neither did the others. They are not for law; they are against the law. Although Fielden is against the law, he did have the English stubbornness to stand up there and shoot, and he fired from over the wagon until finally he disappeared.

I have given you in detail a good deal of the proof. I have told you the reason that I did it was, not only for your own edification, but so that these gentlemen could know what we expect to prove. We have nothing to conceal, we have nothing to hide. We expect as fair a statement from them as to their case.

I have only a word or two more to you, gentlemen. Remember, gentlemen, that this meeting was called for half-past seven. The police did not appear until half-past ten. There are nearly three long hours—about half-past ten, between ten and half-past ten. The bomb-throwers had become discouraged. Those individuals that were situated in different parts of the town had not received the communication, because the conspiracy embraced the fact that spies were to be located there to scatter the word, and then was to continue this destruction. The police came so late, and so many went away, that it was absolutely coming very near to being a fiasco. They had been arranging it for months. The conspiracy had been clearly declared and established. The only thing they needed was the crowd. The crowd failed to come. The police failed to interfere, and finally, at the last moment, having interfered, most of those that were there had gone. And there was another thing. These men that were interested in the throwing of the bomb were paralyzed, notwithstanding their

firing and the shooting, by the attitude of the police who stood up there; and in all my examination of these men, asking each and every one of them as far as I could what they did there that night, I have failed to find a man that ran. They stood up there and fired at these wretches who were pouring into them, from both sides of the street, a volley of shots from pistols. One bomb was fired and thrown, and just the moment that happened, not a policeman with his club—scarcely one—not a policeman with a pistol in his hand, every one standing there waiting for orders. The bomb was thrown, and the firing began from both sides of the policemen and from the crowd, and them alone. The police never fired a shot until after many of their men had already bit the dust.

I will attempt to show you, gentlemen, who threw the bomb, from this locality (indicating on map). I have said to you that the bomb that was thrown was made by Lingg. I will prove that.

I have one other suggestion to make to you. There never was a conspiracy in the world, either small or great—not a conspiracy ever established in the world, but what there was needed some conspirator to give the first information of its existence and its purposes. I want you to be cautious, gentlemen, about an unjust criticism of any member of that conspiracy who first gave us the ideas about it and its ends. Seliger gave us the information, the first information which led to the knowledge of this terrible conspiracy, led to the knowledge of the facts relating to it. I said to you, we may not use Seliger; but I say to you this, gentlemen, that not a single conspirator placed upon the witness stand by the State shall be so placed there without we can do something to corroborate his statements; and even if we do not, I have yet to learn of a man that dare say that that conspiracy did not exist. And so far as that is concerned as a question of law, when a conspirator or a co-conspirator gives his testimony in court, you have a right to reject it if you desire. But, gentlemen, before you reject it the court will simply instruct you in regard to a conspirator's testimony that his testimony is to be considered like any other witness, and that you have a right to

consider his credibility in view of the fact that he is a co-conspirator.

This indictment is for murder, a serious charge. Under our statute the jury fixes the penalty. If murder, the penalty is not less than fourteen years; it may be for life; it may be the death penalty. For manslaughter, the lower degree under murder, under our statute, which is somewhat different from statutes in other States, the penalty is any number of years' imprisonment and may be for life. The indictment in this case is for murder. There are a great many counts here, but the chief thing is the count against these men for murder. Now, it is not necessary in a case of this kind, nor in any case of murder, or any other kind, that the individual who commits the exact and particular offense—for instance, the man who threw the bomb—should be in court at all. He need not even be indicted. The question for you to determine is, having ascertained that a murder was committed, not only who did it, but who is responsible for it, who abetted it, assisted it, or encouraged it? There is no question of law in the case.

We will show to you, I think to your entire satisfaction, that, although perhaps none of these men personally threw that bomb, they each and all abetted, encouraged and advised the throwing of it, and therefore are as guilty as the individual who in fact threw it. They are accessories.

I have talked to you, gentlemen, longer than I expected to, and chiefly so that you would know something about this case, know something about the facts. I have given you not, perhaps, all the details, but I have given you, as a whole, the facts. I want you to patiently listen to the evidence in this case from both sides, and be careful in your analysis. You have, most of you, been here some time, and you have been admirably patient. Only continue that way, and be patient in the matter, and make up your minds when the testimony is all presented, and not before. It may take some days to get at the proof and to place it all before you, so that you can clearly understand it. A great deal of the proof has to come from the mouths of witnesses whose language will have to be interpreted to you. That will take more time. But the whole

case will finally be presented to you substantially, I think, as I have stated it. I will now leave the matter with you.

### THE WITNESSES FOR THE PEOPLE.

*July 16.*

*Felix D. Buschick.* Am a draughtsman. (His testimony had reference simply to maps and plans showing the location of the Haymarket Square, the surrounding streets and alleys, the spot where the bomb was thrown, and the location of the Desplaines Street Station.)

*John Bonfield.* Am Inspector of Police; was in command of the men at Desplaines Station on the night of May 4; got there about six. There were present Capt. Ward, Lieuts. Bowler, Penzen, Stanton, Hubbard, Beard, Steele and Quinn, each in charge of a company; of the forces there, all told, about 180 men; between ten and half-past we marched down north on Desplaines street. Capt. Ward and myself were at the head, Lieut. Steele with his company on the right, and Lieut. Quinn on the left; the next two companies that formed in division front, double line, were Lieut. Bowler on the right, Stanton on the left; next company in single line was Lieut. Hubbard. Lieuts. Beard and Penzen's orders were to stop at Randolph street and face to the right and left. We marched until we came about to the mouth of Crane Brothers' alley. There was a truck wagon standing a little north of that alley and against the east sidewalk of Desplaines street, from which they were speaking.

Orders were, that no man

should draw a weapon or fire or strike anybody until he received positive orders from his commanding officer. Each officer was dressed in full uniform with his coat buttoned up to the throat and his club and belt on. Capt. Ward and myself had our weapons in our hand; pistols in pockets. As we approached there was a person speaking from the truck. Capt. Ward gave the statutory order to disperse: "I command you, in the name of the people of the State of Illinois, to immediately and peaceably disperse." As he repeated that, he said, "I command you and you to assist." Fielden, who was speaking, stepped off the truck, and said: "We are peaceable." Almost instantly I heard behind me a hissing sound, followed, in a second or two, by a terrific explosion. At once firing from the front and both sides poured in on us. From seventy-five to a hundred pistol shots before a shot was fired by any officer. I turned around quickly, saw almost all the men of the second two lines shrink to the ground, and gave the order to close up. Lieuts. Steele and Quinn with their companies charged down the street; the others formed and took both sides. In a few moments the crowd was scattered in every direction. I gave the order to cease firing and went to pick up our wounded. Matthias



J. Degan was almost instantly killed. The wounded, about sixty in number, were carried to the Desplaines Street Station. Seven died from the effects of wounds. As we approached there were five or six on the truck. Did not see the direction of the bomb; it came from my rear; was about ten feet from the wagon. The rear rank of the first company and the second company suffered the most.

*Cross-examined.* Was the highest officer on the ground that night. The whole force was under my special direction. As we marched down, the police occupied the full street from curb to curb. Around Desplaines and Randolph streets there were a few persons scattered, apparently paying no attention to the meeting; the crowd attending the speaking was apparently north of that alley; the speakers' wagon being five or six feet north of that alley. Fielden was facing north and west; there were about a thousand people there; don't remember whether it was moonlight; there were no street lamps lit; there was a clear sky. As we marched along the crowd shifted its position; the speaking went right on.

*Gottfried Waller.* On the evening of 3d May was at Grief's Hall pursuant to an advertisement in the *Arbeiter Zeitung*: "Y—Come Monday night." Before that notice there is the word "Briefkasten," which means letter-box. This notice was a sign for a meeting of the armed section at Grief's Hall; had been there once before, pursuant to a similar notice. There was no other reason for my go-

ing there. There were about seventy or eighty men; was chairman. Of the defendants there were present Engel and Fischer. There was talk about the six men who had been killed at McCormick's. There were circulars there headed "Revenge." Mr. Engel stated a resolution of a prior meeting, that if, on account of the eight-hour strike, there should be an encounter with the police, we should aid the men against them. He stated the Northwest Side group had resolved that we should gather at certain meeting places, and the word "Ruhe" published in the Letter-box of the *Arbeiter Zeitung* should be the signal for us to meet. The Northwest Side group should then assemble in Wicker Park, armed. A committee should observe the movement in the city, and if a conflict should occur the committee should report, and we should first storm the police stations by throwing a bomb and should shoot down everything that came out, and whatever came in our way we should strike down. I proposed a meeting of workingmen for Tuesday morning on Market Square. Fischer said that was a mouse trap; the meeting should be on the Haymarket and in the evening, because there would be more workingmen. Then it was resolved that the meeting should be held at 8 p. m. at the Haymarket; it was stated that the purpose of the meeting was to cheer up the workingmen so they should be prepared, in case a conflict would happen. Fischer was commissioned to call the meeting through handbills; he went away

to order them, but came back after half an hour and said the printing establishment was closed. Nothing was said as to what should be done in case the police interfered with the Haymarket meeting. We discussed why the police stations should be attacked. Several persons said, "We have seen how the capitalists and the police oppressed the workmen, and we should commence to take the rights in our own hands; by attacking the stations we would prevent the police from coming to aid." The plan stated by Engel was adopted with the understanding that every group ought to act independently, according to the general plan. The persons present were from all the groups from the West, South and North sides.

There was no one who expected that the police would get as far as the Haymarket; only, if strikers were attacked, we should strike down the police, however we best could, with bombs or whatever would be at our disposition. The committee which was to be sent to the Haymarket was to be composed of one or two from each group. They should observe the movement, not only on the Haymarket Square, but in the different parts of the city. If a conflict happened in the daytime they should cause the publication of the word "Ruhe." If at night, they should report to the members personally at their homes. On 4th May we did not understand ourselves why the word "Ruhe" was published. It should be inserted in the paper only if a downright revolution had oc-

curred. Fischer first mentioned the word "Ruhe." Engel moved the plan be adopted. Was present at the Haymarket meeting on Tuesday evening; saw the word "Ruhe" in the *Arbeiter Zeitung* about 6 p. m. On my way to the Haymarket stopped at Engel's; he was not at home; was at Zepf's Hall when the bomb exploded. There was some disturbance, and the door was closed. On my way home I stopped at Engel's and told him what had happened at the Haymarket. They had assembled in the back part of their dwelling-place around a jovial glass of beer, and I told them that a bomb was thrown at the Haymarket, and that about a hundred people had been killed there, and they had better go home. Engel said yes, they should go home, and nothing else.

About half a year ago, I had a bomb. It was made out of gas pipe. Got it from Fischer. He said I should use it against the police. The members of the Lehr und Wehr Verein were known not by names, but by numbers. Everybody had to know his own number; my number was 19. The bomb I had I gave to a member; he had it exploded in a hollow tree; had a revolver when I went to the Haymarket; had no bomb. Schnaubelt, at the Lake Street Armed Section meeting, said we should inform our members in other places of the revolution so that it should commence in other places also. On Sunday, before that meeting, was present at a meeting at Bohemian Hall; August Krueger invited me; he

is also called the little Krueger, while Reinhold is known as the large Krueger. There were present Engel and Fischer, besides Gruenwald, the two Kruegers, Schrade, myself.

*Cross-examined.* Was a member of the Lehr und Wehr Verein; its objects are the physical and intellectual advancement of its members. Engel stated both at the meeting on Sunday and at the Monday night meeting that the plan proposed by him was to be followed only if the police should attack us. Any time when we should be attacked by the police, we should defend ourselves.

Nothing was said as to any action to be taken by us at the Haymarket. We did not think that the police would come to the Haymarket. The principal purpose of the Haymarket meeting was to protest against the action of the police at the riot at McCormick's factory. While I was with Fischer at the Haymarket, nothing was said between us about preparations to meet an attack by the police; am indicted for conspiracy; was arrested two weeks after 4th May.

*Bernhard Schrade.* Resided in this country five years; a member of the Lehr und Wehr Verein; was present at the meeting in the basement of Grief's Hall the evening of May 3d. Waller was presiding. There were about thirty or thirty-five people—Waller, Engel, Fischer, Thielen, the Lehman, Donafeldt. Lingg was not there; the chairman stated the objects of the meeting; that so many men at the McCormick factory had been shot by the police; that a

mass meeting was to be held at Haymarket Square, and that we should be prepared, in case the police went beyond their bounds—attacked us; same evening I had been to the carpenter's meeting, and it was said there that the members of the L. u. W. V. should go around to the meeting on Lake Street; stayed there from eight until half-past nine. Circulars headed "Revenge" were distributed there by Balthasar Rau; it was held at Zepf's Hall; the preceding Sunday was at a meeting at the Bohemian Hall.

We talked there about the condition of the workingmen after the 1st of May; that it might not go off so easy after the 1st of May, and if it should not, that they would help themselves and each other; that if we were to get into a conflict with the police, we should mutually assist one another, and the members of the Northwestern group should meet at Wicker Park, and if the police would make an attack, should defend themselves as much as possible, as well as any one could. Nothing was said about dynamite; it was mentioned that the firemen could easily disperse large masses of the people standing upon the street, and it would be the best thing to cut through their hose, annihilate them; was at the Haymarket the night the bomb was thrown; went there with a man named Thielen; got there about half-past eight, and at the corner of Desplaines I heard all the speakers. When the bomb was thrown was at a saloon at 173 West Randolph Street; had left the meeting because a rain

and a shower came up; know all the defendants; saw Engel and Fischer about an hour previous to the meeting, upon the corner of Desplaines and Randolph; went to my home, 581 Milwaukee Avenue. The L. u. W. V. used to meet at Thalia Hall. We had our exercise, marched in the hall—drilled. We had Springfield rifles, which we kept at home. Most of the members had been soldiers in the old country, and we were drilling here for fun—pleasure; members knew each other, but on the list each one had his number.

*Cross-examined.* Know Spies, Parsons, Fielden, Neebe and Schwab only by sight; Lingg and I belonged to the same Carpenter's Union. At the Sunday meeting the discussion was that if the police made an attack upon workmen we would help the workmen to resist it, and if the firemen helped, we would cut the hose. Nothing was said about dynamite or bombs at any of the meetings. Nothing was said about a meeting at any particular night to throw bombs. It was not agreed to throw bombs at the Haymarket meeting. At the Haymarket I had no bomb; I don't know dynamite; knew of no one who was going to take a bomb to that meeting. When I left the Haymarket meeting everything was quiet; did not anticipate any trouble; had seen the signal "Y" before. It was understood that the meetings were to be called by that kind of notice. I left the Haymarket meeting only on account of the approach of a storm.

*Edward J. Steele.* Am Lieutenant of Police. In marching

to the Haymarket had command of a company of twenty-eight.

Two or three seconds after Captain Ward's command to the meeting to disperse, the shell was thrown in the rear. It exploded on the left of my company. There was then also a smaller report in the rear of me, like a large pistol shot, and at that time the crowd in front of us and on the sidewalks fired in to us immediately; before the police did. My men had their arms in their pockets and their clubs in their belts; their hands by their side; was six or eight feet from the speaker's wagon when the command to halt was given; heard somebody say: "Here come the bloodhounds. You do your duty and we will do ours." After the pistol shots from the crowd we returned the fire.

*Cross-examined.* I do not say that the remark about the bloodhounds coming was made by the speaker from the wagon. Fielden was on the sidewalk when the bomb exploded.

*Martin Quinn.* Am Lieutenant of Police, had a company of twenty-five on the left of Lieut. Steele; when they marched to the Haymarket heard the remark: "Here they come now, the bloodhounds. Do your duty, men, and I'll do mine." Fielden was speaking at the time we came up.

As he was going down, he said: "We are peaceable." Some person had hold of his left leg. He reached back, and just as he was going down he fired right where the Inspector was, Capt. Ward and Lieut. Steele. I dropped my club, took my pistol and com-

menced firing in front. The crowd formed a line across the street in our front and immediately when that bomb was fired and almost instantaneously with it that shot from the wagon, they commenced firing into our front and from the side, and then from the alley. Fourteen men of my company were injured; lost sight of Fielden as he got on the sidewalk. I could not distinguish which was first, the explosion of the bomb or the shot fired by Fielden. There was another very loud report immediately after this first explosion. The bomb exploded about the same instant that the remark, "We are peaceable," was made. At the same time he fired that shot. The pistol was aimed in a downward direction, towards where Ward, Steele and Bonfield stood. Saw Fielden fire only that one shot. It was not aimed at the man who had hold of his leg.

*Cross-examined.* Would not swear that it was or was not Fielden who fired the pistol, but it was a speaker, that I know, that fired at the instant he finished saying, "We are peaceable." The torch was still on the wagon at that time, and the street lamp near by was lighted.

*James P. Stanton.* Am Lieutenant of Police; had charge of eighteen men and saw the shell coming through the air; shouted to my men: "Look out, there is a shell," and just then it exploded. It fell four feet from where I stood, and my men were scattered upon the street. All but one or two of my command were wounded; was injured, my body being hit in eleven different places with pieces of the

shell. No shot was fired to my knowledge before the explosion of the bomb. My men were armed; had their clubs in their belts.

*H. F. Krueger.* Am a police officer, heard the cry, "Here they are now, the bloodhounds!" from the wagon at the Haymarket; thought it was Fielden who uttered it; saw Fielden, pistol in hand, take cover behind the wagon and fire at the police. I returned his fire and was myself immediately shot in the kneecap; saw Fielden in the crowd and shot at him again. He staggered, but did not fall, and I lost him.

*John Wessler and Peter Foley,* officers, corroborated the last witness.

*Luther Moulton.* Live in Grand Rapids, Mich.; Am officer of the Knights of Labor; had a talk with August Spies at Grand Rapids on February 22, 1885. He told me the only manner in which the laborers could get a fair division of the product of their labor was by force and arms. He said they had three thousand men organized in Chicago with superior weapons of warfare. There might be bloodshed, for that happened frequently in revolutions. If they failed, they would be hanged. If they succeeded, it would be a revolution. George Washington would have been punished had he failed; am quite certain the term "explosives" was used in connection with arms.

*Cross-examined.* The Grand Rapids police furnished me with the means to come to Chicago.

*George W. Shook.* Was pres-

ent at the conversation referred to and verify it.

*James Bowler.* Am Lieutenant of Police; was in command of twenty-seven men; did not recognize any one firing.

After the explosion I said to my men: "Fire and kill all you can." Drew my own revolver; had it in my breast coat side pocket. In marching, I heard the words: "Here come the bloodhounds," said by somebody close to the wagon; fired nine shots myself. While marching, the men had their arms in their pockets.

*Cross-examined.* Heard the remark about bloodhounds, but did not know who uttered it. There was a kind of light on the wagon, a kind of a torch; saw firing close by the wagon after the explosion, but not from in the wagon; saw no one either in the wagon or getting out of the wagon do any firing; saw Fielden coming off of the wagon very plainly.

*James Bonfield.* In the search that was made in the *Arbeiter Zeitung* office, in Spies' office found a piece of fuse, a fulminating cap and a large double-action revolver; a dirk file. Never saw the cap used for anything except dynamite and nitro-glycerine; found that "Revenge" circular in Spies' office. On the 5th, after the arrest of Spies, I had a conversation with Spies and with Fielden. He stated he was at the Haymarket meeting; spoke of the gathering of the crowd, how it threatened to rain, how they went on the side street, and about Fielden speaking at the time the police came; said he was on the wagon at that

time, and a young Turner was there who had told him the police were coming, told him to come down, took him by the hand and helped him down; he claimed the police had opened fire on them. He said when he got off the wagon he went in the east alley and came out on Randolph Street. He approved of the method, but thought it was a little premature; that the time had hardly arrived to start the revolution or warfare.

Fielden said he was there when the police came up; he got wounded in this alley, then went to the *Arbeiter Zeitung* office to see if any of his friends had got back there; that from there he went over to the Haymarket again to see if any more of his comrades were hurt. Fischer was arrested at the same time, or a few minutes after Spies and Schwab were arrested. Made a search of his house. In a closet I found a piece of gas-pipe about three and a half feet long. There was no gas connection in the house. Fischer was asked to explain how he came by a fulminating cap found in his pocket at the time of the arrest. He said he got it from a Socialist who used to visit Spies' office about four months previous. He claimed he didn't know what it was, and had carried it in his pocket for four months. After some conversation he acknowledged that he knew what it was, and had read an account of it and the use of it in Herr Most's "Science of War." Told of being at the Haymarket meeting until a few minutes before the explosion of the bomb, and he went from there to

Zepf's Hall, and was there at the time of the explosion; acknowledged that he had gotten up the circular headed "Attention, Workingmen."

*Cross-examined.* Twenty or twenty-one compositors of the *Arbeiter-Zeitung* were arrested during that day; found that copy of the "Revenge" circular on one of the desks in the front room. Took reporters to see Spies down in the Central Station. Spies, Schwab and Fielden were in separate cells. Spies said the action taken at the Haymarket was premature. It was done by a hot-head that could not wait long enough. Fielden said the police came up there to disperse them, and they had no business to, that they had a right to talk and say what they pleased under the Constitution, and they should not be interfered with.

*William Ward.* Was Captain of Police at Desplaines Street Station, a member of the force since 1870, a resident of Chicago for 36 years and a veteran of the Rebellion. As the speaker was getting from the wagon he said, "We are peaceable"; a few seconds after heard the explosion in my rear; pistol-firing began from the front and both sides of the street by the crowd; did not recognize anybody firing; then the police began firing, and we charged into the alley; seven policemen died from the effects of wounds; one was brought dead into the station—Mathias J. Degan; there were in all killed and wounded sixty-six or sixty-seven—about twenty-one or twenty-two out of Desplaines Street Station; forty-two in all out of my precinct;

at the time I gave the command there were four to six persons on the wagon; all I could understand of what Fielden said was: "We are peaceable;" did not see Fielden after that; there was no pistol-firing of any kind by anybody before the explosion of the bomb.

*Michael Hahn.* Am a tailor, was at the Haymarket and received an injury in back, thigh, and in leg; went to the hospital that same night. Dr. Newman removed something from my person that night; that is what he said; he showed it to me; it was some kind of a nut; (handed an ordinary iron-threaded nut), guess that was about the size; think that is the same nut.

*Reuben Slayton.* Am a policeman that arrested Fischer; searched him and found a revolver, 44-caliber, loaded, self-acting; found this file ground sharp on three edges and that belt and sheath; ten cartridges in his pocket; also this fulminating cap in his pocket; said he carried that revolver because he carried money, and going home nights to protect himself; said he worked at the *Arbeiter Zeitung* as a compositor for two years; arrested Fielden at his house the same day, May 5th; when I locked him up, he took the bandage off his knee and put it on; asked him where he got it dressed; he told me when he got shot he came down the alley and took a car and went to Twelfth and Canal streets—had his knee dressed there that night.

*Cross-examined.* Met with no resistance from Fischer or Fielden; found no munitions

of war at latter's house; had no warrant for their arrest.

*Theodore Fricke.* Was business superintendent of the *Arbeiter Zeitung*, once its book-keeper, identify Spies' handwriting on the manuscript containing the word "Ruhe;" the *Arbeiter Zeitung* is the property of a corporation; Fischer was a stockholder, so was I, Spies and Schwab; Parsons is not a stockholder; Neebe belongs to the corporation; there was a library in the building belonging to the International Working People's Association—a Socialistic association composed of groups, known by names; Fischer belonged to the Northwest Side group; Engel belonged to the same; Spies formerly belonged to the Northwest

Side group, later to the American group; Parsons belonged to the American group; Schwab to the North Side group; don't know about Lingg; guess Neebe belonged to the North Side group; these groups, except the Northwest Side, had a central committee, which met at No. 107 Fifth Avenue; they had strong Anarchistic principles; Fielden, I guess, belonged to the American group; this book (Johann Most's book) I saw at the library in the *Arbeiter Zeitung* building; have seen that book sold at picnics by Hirschberger, at Socialistic picnics and mass-meetings; at some of those meetings Spies, Parsons and Fielden were present; sometimes Neebe, sometimes Schwab, maybe Fischer.

*Mr. Black* objected to this line of inquiry, because, as they said, it is not shown that any of the defendants knew or participated in the selling, or that they had anything to do with, or that they saw the selling.

The COURT. If men are teaching the public how to commit murder, it is admissible to prove it if it can be proved by items.

*Mr. Black.* Well, does your Honor know what this teaches?

The COURT. I do not know what the contents of the book are. I asked what the book was and I was told that it was Herr Most's "Science of Revolutionary Warfare," and taught the preparing of deadly weapons and missiles, and that was accepted by the other side.

*Mr. Black.* Does that justify your Honor in the construction that it teaches how to commit murder, or of stating that in the presence of the jury?

The COURT. . . . I inquired what sort of book it was, and it was stated by the other side what sort of book it was, and you said nothing about it, so that in ruling upon the question whether it may be shown where it was to be found, where it had been seen, I must take the character of the book into consideration in determining whether it is admissible; whether it is of that character or not we will see when it is translated, I suppose. I suppose the book is not in the English language.



**Fricke.** Saw this book sold at a picnic at Ogden's Grove, on the North Side, in July, last year; there were present Spies, Neebe, Parsons and Fielden; also at a picnic at Sheffield, Indiana, last September, where were present Spies, Neebe, Parsons and, I guess, Fischer.

**Cross-examined.** Have never seen any of the defendants sell Most's books anywhere; all communications to the *Arbeiter Zeitung* went through the hands of the editor, Spies.

**Edmund Furthmann.** Am assistant in the State's Attorney's office; was in the *Arbeiter Zeitung* office on the 5th of May; all the matter shown to Mr. Fricke was obtained in the typesetting-room of the *Arbeiter Zeitung*, and has been in my possession since then; the typesetting-room was full of desks and cases of type, and there were several tables covered with stone, and at every case there was a hook containing a lot of manuscript, which I took away; found the doors locked; found some twenty or twenty-five of the "Revenge" circulars there.

**William Seliger.** Am a carpenter; have lived in Chicago three years and a half; before that at Charlottenburg, Germany; was born at Eilau, Silesia; on May 4th lived at 442 Sedgwick street, second floor; Louis Lingg boarded with me; May 4th, in the evening, was at Zepf's Hall, at a meeting of the Carpenters' Union; was recording secretary; was not at the meeting at 54 West Lake street that night; this "Y — Komme Montag Abend," means that all the armed men should come to

the meeting at 54 West Lake street; the armed men were divers ones—all the Socialistic organizations; there were several organizations in existence which were drilled in the use of arms; saw a copy of the "Revenge" circular at Zepf's Hall; Balthasar Rau brought it to the meeting about nine; Lingg had been making bombs at my house; on Tuesday he told me to work diligently at these bombs, and they would be taken away that day; worked at some loaded shells; drilled holes through which the bolt went; Lingg went to the West Side to a meeting; got back probably after one; he said: "You didn't do much; you ought to have worked more diligently;" I said I hadn't any pleasure at the work; Lingg said, "Well, we will have to work very diligently this afternoon;" told me he had not enough of them; Hubner, Muntzenberg, Heuman, were helping; there were forty or fifty bombs made that afternoon; saw dynamite for the first time in Lingg's room, about five or six weeks previous to 4th of May; Lingg said every workingman should get some dynamite and learn to handle these things; Tuesday afternoon Lingg said those bombs were going to be good fodder for the capitalists and the police, when they came to protect the capitalists; there was a remark that they were to be used that evening, but nothing positive as to time; the Lehman's were at the house for a little while; we had a little trunk with bombs in; there were round and pipe bombs in it; they were loaded with dynamite and caps

fixed; we carried a trunk of them to Neff's Hall; I took two pipe bombs myself; carried them in my pocket; different Socialistic and Anarchistic organizations meet in the back of Neff's Hall; the North Side group met there; when I left Neff's Hall, Thielen and Gustav Lehman were with me; later two large men of the L. u. W. V. came to us; believe they all had bombs; we went to the Larrabee Street Station—Lingg and myself; Lingg said it might be a beautiful thing if we would walk over and throw one or two bombs into the station; there were two policemen sitting in front of the station, and Lingg said if the others came out these two couldn't do much; we would shoot these two down; later a patrol wagon passed; Lingg said that he was going to throw a bomb—that was the best opportunity to throw the bomb—and I said it would not have any purpose; then he became quite wild, excited; said I should give him a light; on the way home Lingg asked me whether I had seen a notice of a meeting of the armed men on the West Side; took the *Arbeiter Zeitung* and called my attention to the word "Ruhe;" Lingg said there was to be a meeting on the West Side that night, and he was going to go at once to it; "Ruhe" meant that everything was to go topsy-turvy; that there was to be trouble. He said that a meeting had been held at which it was determined that the word "Ruhe" should go into the paper, when all armed men should appear at 54 West Lake street; that there should be

trouble; that night at Neff's Hall Hermann said to him, "You are the fault of it all;" I did not hear what Lingg said; they spoke in a subdued tone; somebody said a bomb had fallen, which had killed many and wounded many; on the way home Lingg said that he was even now scolded, chided for the work he had done; we laid the bombs off on our way on Sigel street, between Sedgwick and Hurlbut, under an elevated sidewalk; laid two pipe bombs there; saw Lingg put some bombs there; on Friday before 4th of May, Lingg brought some dynamite to the house in a wooden box; the dynamite with which we filled the bombs on Tuesday was in that box; Lingg once told me he had made eighty to one hundred bombs in all. Am a member of the North Side group of the International Workingmen's Association; was financial secretary; heard Engel make a speech to the North Side group last winter at Neff's Hall; he said that every one could manufacture those bombs for themselves; that these pipes could be found everywhere without cost; that they were to be closed up with wooden plugs fore and aft, and that in one of the plugs was to be drilled a hole for the fuse and cap; he said they were the best means against the police and capitalists; saw two bombs at the *Arbeiter Zeitung* last year at the time of the car-drivers' strike; Rau showed them to some one; Spies was there; Schwab and Neebe were members of the North Side group of the Internationale; Fischer is a member

of some group; Lingg belonged to the North Side group; Engel belonged to a group; I had a rifle; kept it at my dwelling; this book here (Herr Most's book) I saw at public meetings of the North Side group; the North Side group bought them and sold them.

*Cross-examined.* Was arrested after 4th of May; made a statement, but not of all that I have testified today; that was after I had been in prison seven days; have done no work, earned no money, during the time I have been in jail; received money from Capt. Schaack; read in the paper that I was indicted for the murder of Degan; did not know before this case was begun that I was not to be tried; did not know I was to be used as a witness instead of being a defendant at this trial; Capt. Schaack told me that it would be the best if I would tell the truth, and asked me whether I would tell the truth before the court, and I said yes; Lingg has boarded with me since Christmas last; my house where I lived on May 4th is about three-quarters of a mile from the Haymarket; when Lingg and I, on Tuesday night at eleven o'clock, after we had seen the word "Ruhe" in the paper, spoke about going to the West Side, we meant Zepf's Hall, or Greif's Hall, or Florus' Hall; when he brought the first bomb into the house he said they were to be applied on occasions of strikes, and where there were meetings of workmen and were disturbed by the police; there was no agreement as to where the bombs should be

taken after they got to Clybourn avenue; did not hear anything about any of the bombs to be taken by anybody to the Haymarket; we were not making bombs to take to the Haymarket and destroy the police; they were to be taken to Clybourn avenue for use on that evening; they were made everywhere to be used against capitalists and the police; cannot say who had the bomb at the Haymarket on night May 4th; became acquainted with Lingg in August of last year; saw Engel once last year in the office of the *Arbeiter Zeitung*, and again at the meeting of the North Side group; did not see whether the bombs which I saw last summer at the *Arbeiter Zeitung* building were loaded; we kept our guns at home, in broad daylight, and in the presence of our neighbors, or any one who might be on the streets, walked to the hall on Sunday and drilled; we went to the Sharpshooters' Park or to the prairie to exercise; we used to meet and march publicly on the streets with our guns exposed; we didn't try to keep it away from the police force that we had arms and drilled and marched.

*Mrs. Bertha Seliger.* Am wife of William Seliger; Louis Lingg boarded with us; shortly before May 1st saw some bombs as Lingg was about to hide them—about half a dozen lying on the bed; they were round and long ones; after Lingg left the house did not see any more of them; on the Tuesday the bomb was thrown at the Haymarket there were several men at our house; those I knew were Hub-

ner, Heuman, Thielen, Lingg and my husband; they were there until past seven o'clock; going and coming during most of the afternoon, working at bombs; saw Heuman working and filling at them; was so mad I could have thrown them all out; frequently saw Lingg make bombs; saw him melt lead on the cooking-stove in my house—twice with Heuman, once with my husband and Thielen, and frequently by himself; he said to us: "Don't act so foolishly; you might do something too;" on Monday, the day before the bomb was thrown, Lingg was away; in the morning some young fellows came and had their names entered on the list of the union, he was writing pretty much all day; the day after the bomb was thrown, Lingg was at home in the forenoon; he wanted to hide those bombs in the clothes closet, and Lehman was with him; heard some knocking, went in, and said to him: "Mr. Lingg, what are you doing there? I will not suffer that,"—he was tearing everything loose below, and he sent that man Lehman after wall-paper, and he wanted to cover up everything afterwards—nail up everything; on the Friday following, he left my house; Lingg had a trunk which he kept in his bed-room; this instrument (ladle identified by William Seliger) Lingg was always casting with.

*Cross-examined.* Have been locked up on account of this bomb business—on account of Lingg—by Capt. Schaack; it was Lingg's fault I got locked up; Capt. Schaack paid my

rent and gave me money with which to live; don't like Mr. Lingg very well, because he always had wrong things in his head; blame him for me and my husband having been locked up; I said to my husband, "I will tell the truth, and you tell it also;" Capt. Schaack told us we had better tell it; my husband was a Socialist before he got acquainted with Lingg.

*Marshall H. Williamson.* Am a reporter for the *Daily News*, heard Parsons and Fielden speak from windows of *Arbeiter Zeitung* office in 1885; Parsons spoke of the police interfering with them in marching on the Board of Trade; he called the police bloodhounds and called on the mob to follow him in an assault on Marshall Field's dry goods house and various clothing-houses, and take from there what he called the necessities of life; there were about 1,000 people in front of the building. Fielden in his speech called upon the mob to follow them, and he agreed to lead them to rob these places or go into them and take from them what they needed in the way of clothing and dry goods. They both said that the new Board of Trade was built out of money of which they had been robbed; that all the men who transacted business there were robbers and thieves, and that they ought to be killed. Nothing was said in the speeches as to the means or mode of killing; later I went up-stairs; saw Fielden and Parsons and some others whose names I didn't know; didn't know Spies at that time, but remember seeing him there; asked Parsons why they

didn't march upon the Board of Trade and blow it up; he said because the police had interfered, and they had not expected that and were not prepared for them; told him I had seen revolvers exhibited by some in the procession; he told me when they met the police they would be prepared with bombs and dynamite; Fielden was standing at his elbow at the time; he said the next time the police attempted to interfere with them, they would be prepared for them; that would be in the course of a year or so; Spies was in the room; the front room of the *Arbeiter Zeitung* office; was shown what they told me was a dynamite cartridge, wrapped in a piece of paper; Parsons took out of the broken place a small portion of the contents, of a slightly reddish color; he again said it was dynamite, and that was what they would use when they went against the police; he also said he had enough of that where he could put his hands on it to blow up the business center of the city; was shown a coil of fuse about fifteen or twenty feet; also a fulminating cap by which they said dynamite bombs were exploded; the cap was exploded in the room while I was there; it made quite a noise and filled the room with smoke; Parsons called for these articles; they were in a drawer in a desk, and Mr. Spies handed them to him to be shown to me; Parsons told me they were preparing for a fight for their rights; that they believed they were being robbed every day by capitalists and the thieving Board of Trade men; he said it

must stop; told me that they had bombs, dynamite and plenty of rifles and revolvers, and their manner of warfare would be to throw their bombs from the tops of houses and stores, and in that way they could annihilate any force of militia or police brought against them without any harm to themselves; went downstairs and met Detectives Trehorn and Sullivan; took them up-stairs and renewed the conversation with Parsons, and left him talking with the police officers; the conversation I had had with Mr. Parsons was repeated with the police officers; the officers were in citizens' clothes; the red flags in that procession were carried by some women; Fielden, on one occasion, wanted his hearers to follow him to those clothing stores and grocery stores and some other places and get what they needed to support their families, told them to purchase dynamite; said that five cents' worth of dynamite carried around in the vest pocket would do more good than all the revolvers and pistols in the world; Parsons also told them they were being robbed, and offered to lead them to the grocery stores and other places to get what they wanted; that is all I remember of those speeches; heard them some eight or ten times; there were never over between ten and twenty-five people present.

*Cross-examined.* The first of these meetings I attended was about two years ago; wrote reports of those meetings, which I think were published in the *Daily News* the day following; the circulation of the *Daily*

*News* was 121,000 per day; when I went to the meetings at 54 West Lake street I had no trouble to get in; there were no guards at the door; simply went in and sat down and took my notes publicly; Fielden and Parsons learned very soon that I was a reporter on the *Daily News*; when Fielden suggested the five cents' worth of dynamite carried in the vest pocket, he gave no instructions whatever on the subject of how to carry or use it; the proposal to go out to Marshall Field's and some clothing store was a proposal for immediate action; he did not start, however; after he got through with his talk and proposal, he sat down until the meeting was over; the meeting quietly dispersed and went home; heard that same proposal at every single meeting I attended at 54 West Lake street and 700 and something West Indiana street, and various other places; Parsons told me there were some 3,000 armed Socialists in Chicago, well armed with rifles and revolvers, and would have dynamite and bombs when they got ready to use them; that they were meeting and drilling at various halls in the city; he refused to give me a list of those halls or tell me where they bought rifles; said the society was divided into groups, and that they knew each other by twos and threes; showed me an article in the *Alarm*, I think, about street warfare; in that connection I think he told me it was their intention to occupy the Market Place and the Washington Street tunnel, and in that posi-

tion they could successfully encounter any force that could be brought against them.

*John Shea.* Am Lieutenant of Police, and at the head of the detective force; know a man called Rudolph Schnaubelt; he was in the station a couple of days after the arrest of those other gentlemen; when I saw him he had a mustache; after he was arrested I asked Spies if he was at the meeting at the Haymarket; he said he was; that he opened the meeting; that Schwab was there, but that he went to Deering; said Parsons was there, and Fielden; that both spoke there—Fielden at the time the police came; said he spoke at a meeting on May 3, near McCormick's factory; Fischer the next day said on the night of May 4th he and several others, Schwab, Fielden, were at a meeting in the *Arbeiter Zeitung* office; that Rau brought word to the meeting that there was a large crowd at the Haymarket, that Spies was there and very few speakers; and they immediately started to the Haymarket; said he didn't hear Spies, but heard Fielden and Parsons; that pistol and dagger he had had to protect himself; he had not had it with him that night; it was in the *Arbeiter Zeitung* office; on Wednesday morning he had put it on because he didn't intend to stay; That fulminating cap he had got from a man in front of the *Arbeiter Zeitung* office some three months before that; he had made the sharpened dagger himself for his own protection; Spies said he got on the wagon, and said something to Parsons

or Fielden about its going to rain, and left the wagon; don't recollect where he said he went to; Fischer said he was at Zepf's Hall at the time of the explosion.

*Lieut. George W. Hubbard.* Had charge of the company that composed the third division at the Haymarket; saw the bomb when it was about six feet from the ground—a little tail of fire quivering as it fell not more than six feet in front of me; as far as I could see the entire division in front of me disappeared, except the two ends; but a great many of them got up again in a kind of disorder, and then I flanked the left of the division; there was no firing before the explosion of that bomb.

*S. J. Werneke.* Am police officer, was hit with a bullet in the head at the Haymarket; heard Engel at 703 Milwaukee avenue in February, 1886, advise every man in the audience to join them, and urged the people to save up three or four dollars to buy a revolver that was good enough to shoot these policemen down.

*John J. Ryan.* Am a retired officer of the United States navy; have seen Spies, Neebe, Parsons, Fielden and Schwab on the occasion of their Sunday afternoon meetings during the summer of last year and the year previous; heard some of them speak there, namely, Spies, Parsons and Fielden, in the English language; Parsons was speaking in a general way about trouble with the workingmen and the people, what he called the proletariat class, and spoke

about their enemies, the police and the constituted authorities; that the authorities would use the police and militia and they would have to use force against them; advised them to purchase rifles; if they had not money enough for that, then to buy pistols, and if they couldn't buy pistols they could buy sufficient dynamite for twenty-five cents to blow up a building the size of the Pullman building; Fielden spoke about dynamite and fire-arms to be used against the police, and any one who opposed them in their designs; they wanted things their way and to regulate society; the speeches were alike Sunday after Sunday; heard Spies speak on the lake front, he represented, as he said, the oppressed class, the workingmen, as opposed to the capitalists and property-owners; the latter were the enemy of the workingmen; if they couldn't get their rights in a peaceable manner they must get them in a forcible way; heard that talk about ten or fifteen times; the meetings were held there every Sunday until late in the fall; after the picnic, Parsons, I think, spoke about the young German experimenting with dynamite at this picnic; that this young German had a small quantity of dynamite in a tomato-can; it was thrown into a pond or lake, and he spoke of the force this amount of dynamite exerted, and what could be done with it in destroying buildings and property in the city.

*Cross-examined.* Those lake front meetings were held publicly; the largest number of per-

sons I ever saw attend was not more than 150.

*Harry Wilkinson.* Am a reporter for the *Daily News*; on Thanksgiving Day, last year, heard Mr. Parsons speak on the Market Square; he advised the workmen who were present (several hundred) to stand together, and to use force in procuring their rights; told them that they were slaves; that out of a certain sum of money the per cent. they got was too small; it ought to be more evenly divided with the man who employed them; last January I inquired of Spies about an explosive which had been placed on Judge Lambert Tree's steps, and one that was placed in the Chicago, Burlington and Quincy Railroad offices, and he emphatically denied that those machines were either made or placed by Socialists or Anarchists, and proved it by showing me that they were entirely different in character to those used by the Socialists; he showed me this bomb (indicating), which he described as the Czar; I took it with me; he spoke of the wonderful destructive power of the Czar bomb; said it was the same kind that had been used by Nihilists in destroying the Czar; told him that I thought it was a pretty tall story, and he became somewhat excited and produced this, and said that there were others, larger than that, run by mechanical power—clock-work bombs—and he gave me that in a small room adjoining the counting-room office of the *Arbeiter Zeitung*; he denied that those things were made at the *Arbeiter Zeitung* office; said they

were made by other persons and that there were several thousand of them in Chicago distributed, and that at some times they were distributed through the *Arbeiter Zeitung* office; that those who could make bombs made more than they could use, and those that could make them gave them to those that could not; that that one was one of the samples; on another occasion, Spies and Gruenhut and myself went to dinner together, and he told us there about the organization of their people in a rather boastful manner; how they had gone out on excursions on nice summer mornings, some miles out of the city, and practiced throwing these bombs; the manner of exploding them; that they had demonstrated that bombs made of compound metal were much better than the other kind, and that a fuse bomb with a detonating cap inside was by far the best; and how at one attempt made in his presence one of their machines had been exploded in the midst of a little grove, and that it had entirely demolished the scenery; blown down four or five trees; he described some very tall and very strong men, who could throw a large-size bomb weighing five pounds, fifty paces; and stated how, in case of a conflict with the police or militia, when the latter would come marching up a street, they would be received by the throwers formed in the shape of the letter V in the mouth of the street just crossing the intersection, illustrating this by taking some little tooth-picks out of a vase on the table, laying them down and making



a street intersection. He stated the militia would probably not stay to see a second or third bomb go off. If the conflict should occur at any of the principal street intersections in the city, some of those organized men would be on the tops of houses ready to throw bombs overboard among the advancing troops or police. All these matters had been investigated; the men were all thoroughly trained and organized. The means of access to the housetops of street intersections was a matter of common information among their adherents. He said they had no leaders; one was instructed as well as another, and when the great day came each one would know his duty and do it; tried to find out when this would probably occur, and he did not fix the date precisely or approximately. At another interview he said it would probably occur in the first conflict between the police and the strikers; that if there would be a universal strike for this eight-hour system there would probably be a conflict of some sort brought about in some way between the First and Second Regiment of the Illinois National Guards and the police, and the dynamite upon the other hand.

He spoke of other larger bombs, as large as a cigar-box, to be exploded by electricity, which would be placed under a street in case they decided to barricade any section of the city, that they had experimented with. That certain members of the organization had in their possession a complete detail, maps and plans of the underground system

of the city. That these machines would either destroy everybody that was above them when they went off, or so tear up the street as to make it impassable. I understood that the object of all this was the bettering of the workingmen's condition by the demolition of their oppressors. He vaguely spoke of a list of prominent citizens who might suddenly be blown up one at a time or all at once. I frequently said that I didn't believe much in the story he told me.

Had this conversation with Spies in the *Arbeiter-Zeitung* at his own desk. Schwab was there once or twice.

He mentioned Market Square, and that it would take a very few men to fortify that street against all the police and militia in Chicago, and that they would have the tunnel at their back for a convenient place of retreat for those who were not engaged in throwing the shells, or for women and children whom they might care to take there.

*Cross-examined.* Got leave of Spies to carry the bomb off and show it to Mr. Stone. Did not take any notes while the conversation with Spies was going on; wrote them up the first opportunity I afterwards had. Spies said that they had about 9,000 bombs; did not believe all Spies said.

*Gustav Lehman.* Am a carpenter; have been here four years; was born in Prussia; attended a meeting at 54 West Lake street the evening of May 3d; got there a quarter of nine. I went there from my home by myself; saw the *Arbeiter-Zei-*

tung containing the notice "Y—Komme Montag Abend." It meant that the armed ones should attend the meeting at 54 West Lake street. Lingg went home with me; we had a little quarrel; Lingg came up from behind, on the sidewalk, and said to us, "You are all oxen, fools;" asked him what had taken place at the meeting, where we were just coming from. Lingg told me that if I wanted to know something I should come to 58 Clybourn avenue the next evening. There were present Seliger, my brother, and one other man. The next day I went to Lingg's about five o'clock; saw there Lingg, Seliger, and a blacksmith, whose name I don't know, and Hubner. They did some work in the bed-room; Lingg and Huebner had a cloth tied around their faces. Hubner was cutting a fuse, or a coil of fuse, into pieces. They were making these fuse and caps in the front room. Lingg gave me a small hand satchel, with a tin box in it, and three rounds of bombs, and two coils of fuse and some caps. It was said that dynamite was in it. It was nearly full. This box of caps (indicating) I found afterwards in the satchel. Lingg said to me he wanted me to keep these things so that no one could find them; took them home with me, to the wood-shed; got up at three o'clock that night and carried them away to the prairie behind Ogden's Grove. Afterwards went to the prairie with a detective, about May 19th or 20th, to find the things that Lingg had given me. The bombs and dynamite, the fuse and the caps were still there. Have been

a member of the North Side Group of the International Workingmen's Association. The group met at 58 Clybourn avenue, regularly, every Monday evening. We talked together there, advised together, and reviewed what had happened among the workingmen during the week. We had hunting-guns and shot-guns with which we drilled. I kept my gun at my house. I heard Engel make a speech at 58 Clybourn avenue, about February of this year, before the workingmen of the North Side. He said those who could not buy revolvers should buy dynamite. It was cheap and easily handled. A gas-pipe was to be taken and a wooden plug put into the ends, and it was to be filled with dynamite. Then the other end is also closed up with a wooden plug and old nails are tied around the pipe by means of wire. Then a hole is bored into one end of it, and a fuse with a cap is put into that hole. Engel said some gas-pipe was to be found on the West Side, near the river, near the bridge.

*Jeremiah Sullivan.* Am a detective; was on the Market Square the night of the inauguration of the Board of Trade; there was quite a large crowd. Parsons spoke about the Board of Trade, and showed some figures how the poor man was robbed; he denounced the police as bloodhounds, the militia as servants of the capitalists, robbing the laboring classes and invited them all in a body to go there and partake of some of those twenty-dollar dishes that they had up at the Board of

Trade building. They were to get there by force. Fielden denounced the police and militia as bloodhounds. Schwab was there and called the attention of the crowd to the militia, and they all started off toward the militia. Then they all marched in a body, some carrying red flags; saw in the procession Schwab, Parsons, Fielden, and I am not positive as to that young fellow (Lingg). There was no United States flag in the procession. The procession stopped at 107 Fifth avenue. Parsons went in and spoke from the window. He denounced the policemen as bloodhounds, and the militia also, and stated how they stopped them from going in there and partaking of the food; that a good many of his audience did not have clothes and could not afford to pay twenty cents for a meal, let alone twenty dollars, and wanted them to go and follow him, and he would make a raid on those different places, mentioning Marshall Field's and one or two other places. After Fielden spoke, and wanted them all to go down with him in a body and he would lead them; met Williamson, the reporter, just as he was coming down stairs, that evening. We went up stairs with him. I shook hands with Mr. Fielden and spoke to him. They did not know me as a policeman. Fielden, Parsons and Schwab were there. Spies was at the desk. Parsons asked Spies for this dynamite. He brought it over, and Parsons told how it could be used; that if it was thrown into a line of police or militia it would take

the whole platoon. He also exhibited a coil of fuse. I said: "You can get that in any quarry. They use that in blasting powder." He said: "It comes in good to load these with—to touch these off with," referring to dynamite shells. Asked one of them why they didn't go into the Board of Trade building. They said that they were not prepared that night; that there were too many of the bloodhounds before them on the street, but the next time they would turn out they would meet them with their own weapons and worse.

*Morris Neff.* Live at 58 Clybourn avenue, known as Thuringer Hall, also as Neff's Hall, since seven years; keep a saloon there. The North Side group used to meet there. On the night the bomb was thrown was at my saloon. Louis Lingg came in, in company with Seliger and another man whom I had not seen before. This stranger carried the satchel. He put it on the floor. Lingg and Seliger were standing by, and Lingg asked me if some one had asked for him. Lingg and Seliger came back at about eleven o'clock. They were all talking together. Heard one of them halloo out very loud, "That is all your fault." Heard them also say that the bomb had been thrown among the police and some of them had been killed.

Engel addressed the North Side group in my hall in February last winter. He wanted money for a new paper, the *Anarchist*, started by the Northwest Side group and two of the South Side groups. He said the

*Arbeiter-Zeitung* was not outspoken enough in those Anarchistic principles; therefore they started this paper. He gave a kind of history of revolutions in the old country, stated that the nobility of France were only forced to give up their privileges by brute force; that the slaveholders in the South were compelled by force to liberate their slaves, and the present wage-slavery would be done away with only by force also. Advised them to arm themselves, and if guns were too dear for them they should use cheaper weapons—dynamite or anything they could get hold of to fight the enemy. To make bombs, anything that was hollow in the shape of gas-pipes would do.

*Andrew C. Johnson.* Am a Pinkerton detective; became a member of the International Workingmen's Association in 1885. The blowing up of the Board of Trade was proposed on March 29 by Fielden, and indorsed; was admitted into the armed group on August 24, at Greif's Hall. There were twenty or so men and two women present. Among them Parsons, Fielden, besides Walters, Bodendick, Boyd and Larson, Parker, Franklin and Snyder. A man armed with a long cavalry sword, dressed in a blue blouse, wearing a slouch hat, came in and ordered all those present to fall in. Those present answered to their names. He inquired whether there were any new members who wished to join the military company. Those who did should step to the front. Myself and two others did so. Was told my number was 16.

Parsons and Bodendick vouched for me. We were put through the regular manual drill, marching, counter-marching, turning, forming fours, wheeling, etc. That man with a sword drilled us, a German. A man came into the room with two tin boxes. The drill instructor asked us to examine them, as they were the latest improved dynamite bomb. After that a man named Walters was chosen as captain and Parsons for lieutenant. The drill instructor suggested that we ought to choose some other hall, as we were not quite safe there, and added, "We have a fine place at 636 Milwaukee avenue. We have a short range in the basement, where we practice shooting regularly." The time for the next meeting of the armed section was fixed for the following Monday. Parsons and Fielden drilled with us that evening. We had a discussion as to the best way of procuring arms. Some one suggested that each member pay a weekly amount until he had enough to purchase a rifle for each member of the company. Parsons suggested: "Look here, boys; why can't we make a raid some night on the militia armory? There are only two or three men on guard there, and it is easily done." This suggestion was favored by some members, but after some more discussion the matter of the raid on the armory was put off.

*Joseph Gruenhut.* Am a factory and tenement-house inspector of the Health Department. Am interested in labor movements, formerly the Labor Party of the United States. It

changed its name into the Socialistic Labor Party; am a Socialist. I don't consider myself an Anarchist; am not a member of any group of the Internationals in the city, nor of the Lehr und Wher Verein; was present at interviews between the reporter Wilkinson and Spies. Mr. Wilkinson asked him how many members belonged to the military societies of organized trade and labor unions. Spies said that there were many thousand; that these organizations were open to everybody, and at meetings people were asked to become members, but their names would not be known, because they would be numbered, and they didn't keep any record of names. Mr. Spies laid some toothpicks on the table so as to show the position of armed men on tops of houses, on street corners, and how they could keep a company of militia or police in check by the use of dynamite bombs. The conversation was carried on in a conversational tone, half joking, etc., and it lasted perhaps a quarter of an hour, while we were taking our supper.

*Cross-examined.* Heard no reference to any attack to be made on the first of May.

*F. H. Newman.* Am a physician; identified an iron nut extracted from Hahn. I examined some ten or twelve officers, and had found some bullets and fragments of a combination of metals much lighter than lead. This piece of metal I took from the heel of Officer Barber. It made a ragged wound and was buried in the bone; crushed the bone considerably, fractured it in sev-

eral places; examined the wounds of one officer who had a large ragged wound in the liver. It could have been a wound produced by a bullet, if the bullet was very ragged, spread out considerably, as they do sometimes.

*Maxwell E. Dickson.* Am a newspaper reporter; met Mr. Parsons the commencement of this year; gave me two or three papers, and one of them contained one or two diagrams, a plan of warfare. Parsons stated that the social revolution would be brought about in the way that paper would describe. In November of last year, I remarked to Parsons, in a sort of joking way, "You are not going to blow up anybody, are you?" He said, "I don't say that we won't, I don't know that we won't, but you will see the revolution brought about, and sooner than you think for." Attended a number of meetings at which some of the defendants spoke.

The Twelfth Street Turner Hall meeting was a meeting called for the purpose of discussing the Socialistic platform. A circular had been issued, in which public men, clergy, employers and others who were interested in the social question were invited to be present to discuss the question of the social movement. Mr. Parsons made a speech; he said that the degradation of labor was brought about by what was known as the rights of private property; he quoted a long line of statistics, showing that an average man with a capital of five thousand dollars was enabled to make four thousand dollars a year, and thus get rich while

his employe, who made the money for him, obtained but \$340, and there were upwards of two million heads of families who were in want, or bordering on want, making their living either by theft, robbery or any such occupation as they could get work in; and he said that, while they were the champions of free speech and social order, it would be hard for the man who stood in the way of liberty, fraternity and equality to all. Fielden said that the majority of men were starving because of over-production, and went on to show that overcoats were being sent to Africa, to the Congo states, which were needed at home, and he could not understand how that was. As a Socialist, he believed in the equal rights of every man to live. The present condition of the laboring man was due to the domination of capital, and they could expect no remedy from legislatures, and there were enough present in the hall to take Chicago from the grasp of the capitalists; that capital must divide with labor; that the time was coming when a contest would arise between capital and labor. He was no alarmist, but the Socialist should be prepared for the victory when it did come. Spies spoke in German, advising the workmen to organize in order to obtain their rights, and that they might be prepared for the emergency. There were resolutions adopted denouncing the capitalists, the editors and clergymen, and those who had refused to come to hear the truth spoken and discuss the question.

At a meeting at Mueller's Hall Fielden presided. Schwab, in German, said that the gap between the rich and the poor was growing wider; that, although despotism in Russia had endeavored to suppress Nihilism by executing some and sending others to Siberia, Nihilism was still growing. He praised Reinsdorf who had then been recently executed in Europe, but stated that his death had been avenged by the killing of Rumpf, the Chief of Police of Frankfort, who had been industrious in endeavoring to crush out Socialism; that murder was forced on many a man through the misery brought on him by capital; that freedom in the United States was a farce, and in Illinois was literally unknown; that both of the political parties were corrupt, and what was needed here was a bloody revolution which would right their wrongs.

Mr. Fielden called upon the capitalists to answer these arguments and to save their property, for when the Socialists decided to appropriate the property of the capitalists it would be too late for the capitalists to save anything.

Spies said in German that the workmen should revolt at once. He had been accused of giving this advice before, it was true, and he was proud of it. That wage slavery could only be abolished through powder and ball. The ballot was a sort of skin game. He compared it to a deck of cards in which there was a marked deck put in the place of the genuine, and in which the poor man got all of the skin cards, so that, when

the dealer laid down the cards, his money was taken from him. Then Spies offered these resolutions, which were adopted:

"Whereas, our comrades in Germany have slain one of the dirtiest dogs of his Majesty Lehmann, the greatest disgrace of the present time—namely, the spy Rumpf.

"Resolved, That we rejoice over and applaud the noble and heroic act."

Then Parsons offered some resolution favoring the abolition of the present social system, and the formation of a new social co-operative system that would bring about an equality between capital and labor.

At next meeting I attended on the Market Square, on Thanksgiving day, Parsons asked what they had to be thankful for, whether it was for their poverty, their lack of sufficient food and clothing, etc., and argued that the capitalists on the avenue spent more money for wine at one meal than some of them received pay in a month. Fielden said they would be justified in going over to Marshall Field's and taking out from there that which belonged to them. A series of resolutions were adopted, offered by Parsons, denouncing the President for having set apart Thanksgiving day—that it was a fallacy and a fraud; that the workingmen had nothing to be thankful for; that only a few obtained the riches that were produced, while the many had to starve.

*Cross-examined.* Parsons said to me that when the social revolution came, it would be better for all men; it would place every

man on an equality. He pictured me personally as a wage slave, referring to my position as a newspaper reporter, and that all reforms had to be brought about through revolution, and bloodshed could not be avoided. Frequently heard him give expression to such ideas in friendly conversation, in which the social outlook of the country was talked over, and Parsons frequently insisted that any method would be justifiable to accomplish the object which he advocated as the intended result of a social revolution. Parsons once stated to me that if it became necessary they would use dynamite, and it might become necessary. Parsons never expressed any distinct proposal to inaugurate the revolution at any particular time, or by the use of any particular force. He simply spoke of the social revolution as the inevitable future.

*Paul C. Hull.* Am a reporter of the *Daily News*; attended the Haymarket meeting and heard Fielden speak. When the bomb exploded was on the iron stairway. After the bomb exploded the firing began from the crowd before the police fired; saw the bomb in the air. When the speaking began there were about eight hundred to one thousand people. At the time the police came it had dwindled away a third.

Spies told his version of the McCormick riot. He had been charged with being responsible for the riot and the death of those men, by Mr. McCormick. He said Mr. McCormick was a liar and was himself responsible for the death of the six men

which he claimed were killed at that time; that he had addressed a meeting on the prairie, and when the factory bell rang a body of the meeting which he was addressing detached themselves and went toward the factory, and that there the riot occurred. He then touched upon the dominating question of labor and capital and their relations very briefly, and asked what meant this array of Gatling guns, infantry ready to arms, patrol wagons and policemen, and deduced from that that it was the Government or capitalists preparing to crush them, should they try to right their wrongs; don't remember that he said anything in his speech about the means to be employed against that capitalistic force.

Parsons dealt considerably in labor statistics. He drew the conclusion that the capitalists got eighty-five cents out of the dollar, and the laboring man fifteen cents, and that the eight-hour agitation and the agitation of the social question was a still hunt after the other eighty-five cents. He advised the using of violent means by the workingmen to right their wrongs. Said that law and government was the tool of the wealthy to oppress the poor; that the ballot was no way in which to right their wrongs. That could only be done by physical force.

Fielden said Martin Foran had been sent to Congress to represent the Labor Party, and he did not do it satisfactorily. When McCormick's name was mentioned during the speeches there were exclamations like "Hang him," or "Throw him in-

to the lake." Some such a remark would be made when any prominent Chicago capitalist's name was used. When some one in the crowd cried "Let's hang him now," when some man's name was mentioned, one of the speakers, either Spies or Parsons, said, "No, we are not ready yet."

*Cross-examined.* I don't believe I heard Fielden say, in a loud voice, "There come the bloodhounds! Now you do your duty and I'll do mine," when the police were coming up.

*Whiting Allen.* Am a reporter, was present at the Haymarket meeting. Parsons was speaking when I got there. About the only thing that I could quote from his speech is this: "What good are these strikes going to do? Do you think that anything will be accomplished by them? Do you think the workingmen are going to gain their point? No, no; they will not. The result of them will be that you will have to go back to work for less money than you are getting." He mentioned the name of Jay Gould. There were cries from the crowd, "Hang Jay Gould!" "Throw him into the lake!" and so on. He said, "No, no; that would not do any good. If you would hang Jay Gould now, there would be another, and perhaps a hundred, up to-morrow. It don't do any good to hang one man; you have to kill them all, or get rid of them all." Then he went on to say that it was not the individual, but the system; that the government should be destroyed. It was the wrong government, and these people who supported it had to



be destroyed. I heard him cry, "To arms!" The crowd was extremely turbulent. It seemed to be thoroughly in sympathy with the speakers; was extremely excited, and applauded almost every utterance; stayed there some ten or fifteen minutes. I then left and went to Zepf's Hall. Later I came back again, when Fielden was speaking. When the bomb was thrown was in the saloon of Zepf's Hall, standing about the middle of the room at the time; did not see any of the defendants there.

*Charles R. Tuttle.* Was at the Haymarket as a reporter. Parsons made a series of references to existing strikes—one was the Southwestern strike—and to Jay Gould, the head of that system of railways, and the winding up of the peroration in connection with that created a great deal of excitement and many responses from the audience. He then spoke of strikes at McCormick's, and detailed the suffering of the people who had wives and children, and who were being robbed by one whom I took to be Mr. McCormick; who were being robbed, anyway, by capitalists. He said it was no wonder that these persons were struggling for their rights, and then said that the police had been called on by the capitalists to suppress the first indications of any movement on the part of the working people to stand up for rights, and he asked what they are going to do. One man—I believe the same one who had spoken when he referred to Gould—stuck up his hand with a revolver in it, and said, "We will shoot the

devils," or some such expression, and I saw two others sticking up their hands, near to him, who made similar expressions, and had what I took to be at the time revolvers.

*Edward Cosgrove.* Am a detective; was on duty at the Haymarket. Spies talked about the police, the bloodhounds of the law, shooting down six of their brothers, and he said: "When you are ready to do something, do it, and don't tell anybody you are going to." A number of the crowd cheered him loudly. Parsons talked of statistics—about the price laboring men received. He said they got fifteen cents out of a dollar, and they were on the still hunt for the other eighty-five. He talked of the police and capitalists and Pinkertons. He said he was down in the Hocking Valley region, and they were only getting twenty-four cents a day, and that was less than Chinamen got. And he said his hearers would be worse than Chinamen if they didn't arm themselves, and they would be held responsible for blood that would flow in the near future. There was a great deal of cheering close to the wagon during his speech. Was in Capt. Ward's office when the police were called out; came down the street at the time the police did. Heard no firing of any kind before the explosion of the bomb, but immediately after that. Can't tell from what source the pistol shots came, whether the police fired first or the other side.

*Timothy McKeough.* Am a detective; was present when the meeting opened. Spies got on

the wagon and called out twice: "Is Mr. Parsons here?" He received no answer, and said: "Never mind, I will go and find him myself." Somebody said: "Let us pull the wagon around on Randolph street and hold the meeting there." Spies said: "No, that might stop the street cars." He started away then, and Officer Myers and myself followed him as far as the corner, and in about fifteen minutes he returned, and when I got back he was addressing the meeting, talking about what happened to their brethren the day before at McCormick's. He had been down to McCormick's and addressed a meeting, and they wanted to stop him; tried to pull him off the car because he was a Socialist; that while he was talking a portion of the crowd started toward McCormick's and commenced to throw stones, the most harmless amusement they could have; how wagons loaded with police came down the Black Road and commenced firing into the crowd. Somebody halloed out: "Let us hang him," and he said: "My friends, when you get ready to do anything, go and do it, and say nothing about it." Parsons arrived and Spies introduced him, saying Parsons could talk better English than he, and would probably entertain them better. The crowd in the neighborhood of the wagon appeared very much excited when Spies spoke about the shooting down of workmen at McCormick's. Parsons quoted from some book on labor statistics, which he thought his hearers probably had not read, because they didn't have the money to buy it or

leisure to read it, as they had to work too much. He said out of every dollar the laboring man makes for capitalists he only gets fifteen cents, and they are on a still hunt for the other eighty-five. He had been down to the coal mines, and, according to labor statistics, they received 24½ cents for their daily labor on the average during a year. That was just half as much as the Chinaman would get, and he said: "If we keep on we will be a great deal worse than Chinamen. I am a tenant and I pay rent to a landlord." Somebody asked, "What does the landlord do with it?" Parsons said the landlord pays taxes, the taxes pay the sheriff, the police, the Pinkertonites and the militia, who are ready to shoot them down when they are looking for their rights. He said: "I am a Socialist from the top of my head to the soles of my feet, and I will express my sentiments if I die before morning." Heard Mr. Parsons say, taking off his hat in one one hand: "To arms! to arms! to arms!" Then I went over to Desplaines Street Station and reported to Inspector Bonfield. When I came back Fielden was speaking. He criticised Martin Foran, the Congressman that was elected by the working people. He said the law was for the capitalists. "Yesterday, when their brothers demanded their rights at McCormick's, the law came out and shot them down. When Mr. McCormick closed his door against them for demanding their rights, the law did not protect them." If they loved their wives, their children, they should take the

law, kill it, stab it, throttle it, or it would throttle them. That appeared to make the crowd near the wagon more excited, and I made another report to Inspector Bonfield; saw Spies, Parsons and Fielden on the wagon. I saw Schwab on the wagon in the early part of the evening, and a man named Schnaubelt.

*Henry E. O. Heineman.* Am a reporter of the *Chicago Tribune*. I saw the bomb rise out of the crowd and fall among the police. Didn't hear any shots before the bomb exploded. Almost instantly after it shots were heard. Could not say whether the first shots came from the police or the crowd. I heard Parsons call out toward the close of his speech, "To arms! to arms! to arms!" Fielden, towards the end of his speech, told the crowd to kill the law, to stab it, to throttle it, or else it would throttle them. Was formerly an Internationalist. Ceased my connection with them about two years ago. At that time the defendant Neebe belonged to the same group I belonged to. It is not in existence now. Met Spies and Schwab occasionally in the groups. Ceased my connection with the Internationalists immediately after, and on account of the lectures Herr Most delivered in this city. Saw on the wagon at the Haymarket meeting Spies, Parsons, Fielden and at one time Rudolph Schnaubelt.

*G. P. English.* Am a reporter for the *Tribune*. I got to the Haymarket meeting on 4th of May about half-past seven. Mr. Spies got up on the wagon and

said Mr. Fielden and Mr. Parsons were to make a speech, but they hadn't come. Spies got down off the wagon and went toward Randolph street. Was gone five or ten minutes. As he came back, asked him if Parsons was going to speak. Said yes. Then he got up on the wagon and said: "Gentlemen, please come to order." Had a notebook and a pencil in my overcoat pocket and made notes in the pocket. Some I can read, some I can't. Don't recollect what he or the others said without my notes.

Before Spies commenced somebody suggested the meeting should go over to the Haymarket; Spies said no, that the crowd would interfere with the street cars. Here is what I have of Spies' speech:

"Gentlemen and fellow workmen: Mr. Parsons and Mr. Fielden will be here in a very short time to address you. I will say, however, first, this meeting was called for the purpose of discussing the general situation of the eight-hour strike, and the events which have taken place during the last forty-eight hours. It seems to have been the opinion of the authorities that this meeting has been called for the purpose of raising a little row and disturbance. This, however, was not the intention of the committee that called the meeting. The committee that called the meeting wanted to tell you certain facts of which you are probably aware. The capitalistic press has been misleading—misrepresenting the cause of labor for the last few weeks, so much so"—there is something

here unintelligible that I can't read; some of it went off on the side of my pocket. The next is: "Whenever strikes have taken place; whenever people have been driven to violence by the oppression of their"—something unintelligible here—"Then the police"—a few unintelligible words, then there were cheers—"But I want to tell you, gentlemen, that these acts of violence are the natural outcome of the degradation and subjection to which working people are subjected. I was addressing a meeting of ten thousand wage slaves yesterday afternoon in the neighborhood of McCormick's. Most of them were good church-going people. They didn't want me to speak because I was a Socialist. They wanted to tear me down from the cars, but I spoke to them and told them they must stick together"—some more that is unintelligible—"and he would have to submit to them if they would stick together." Next I have is: "They were not Anarchists, but good church-going people—they were good Christians. The patrol wagons came, and blood was shed."

Some one in the crowd said: "Shame on them." The next thing I have is: "Throwing stones at the factory; most harmless sport." Then Spies said: "What did the police do?" Some one in the crowd said, "Murdered them." Then he went on: "They only came to the meeting there as if attending church." . . . "Such things tell you of the agitation." . . . "Couldn't help themselves any more." "It was then when they resorted to violence." . . . "Before you starve." . . . "This fight that is going on now is simply a struggle for the existence of the oppressed classes."

My pocket got full of paper; my notes got more unintelligible. The meeting seemed orderly. Took out my paper and reported openly during the rest of the meeting. The balance of my notes I have not got. From what appears in my report in the *Tribune*, can give you part of what Spies, Fielden and Parsons said, only an abstract. It is verbatim, except the pronouns and verbs are changed.

The balance of Spies speech is as follows: "It was said that I inspired the attack on McCormick's. That is a lie. The fight is going on. Now is the chance to strike for the existence of the oppressed classes. The oppressors want us to be content. They will kill us. The thought of liberty which inspired your sires to fight for their freedom ought to animate you today. The day is not far distant when we will resort to hanging these men. (Applause and cries of 'Hang them now.') McCormick is the man who created the row Monday, and he must be held responsible for the murder of our brothers. (Cries of 'Hang him.') Don't make any threats, they are of no avail. Whenever you get ready to do something, do it, and don't make any threats beforehand. There are in the city today between forty and fifty thousand men locked out because they re-

fuse to obey the supreme will or dictation of a small number of men. The families of twenty-five or thirty thousand men are starving because their husbands and fathers are not men enough to withstand and resist the dictation of a few thieves on a grand scale, to put it out of the power of the few men to say whether they should work or not. You place your lives, your happiness, everything, out of the arbitrary power of a few rascals who have been raised in idleness and luxury upon the fruits of your labor. Will you stand that? (Cries of 'No.') The press say we are Bohemians, Poles, Russians, Germans—that there are no Americans among us. That is a lie. Every honest American is with us; those who are not are unworthy of their traditions and their forefathers."

Spies spoke fifteen or twenty minutes. What I have given here would not represent more than five or six minutes of actual talking. Parsons stated first that the remedy for the wrongs of the workingmen was in Socialism; otherwise they would soon become Chinamen. "It is time to raise a note of warning. There is nothing in the eight-hour movement to excite the capitalists. Do you know that the military are under arms and a Gatling gun is ready to mow you down? Is this Germany, Russia or Spain? (A voice: 'It looks like it.') Whenever you make a demand for eight hours' pay, an increase of pay, the militia and the deputy sheriffs and the Pinkerton men are called out, and you are shot and clubbed and murdered in the streets. I am not here

for the purpose of inciting anybody, but to speak out, to tell the facts as they exist, even though it shall cost me my life before morning." "It behooves you, as you love your wives and children, if you don't want to see them perish with hunger, killed or cut down like dogs on the street, Americans, in the interest of your liberty and your independence, to arm, to arm yourselves. (Applause and cries of 'We will do it, we are ready now.') You are not." Besides what I have stated above he spoke for a long while about the fact that out of every dollar the workingman got fifteen cents, and the capitalists—the employers—got eighty-five cents. He said, "To arms, to arms," in his ordinary way of talking. The first that I have written out of Fielden's speech is:

"There are premonitions of danger—all know it. The press say the Anarchists will sneak away; we are not going to. If we continue to be robbed it will not be long before we will be murdered. There is no security for the working classes under the present social system. A few individuals control the means of living and hold the workingmen in a vise. Everybody does not know that. Those who know it are tired of it, and know the others will get tired of it, too. They are determined to end it and will end it, and there is no power in the land that will prevent them. Congressman Foran says the laborer can get nothing from legisla-

tion. He also said that the laborers can get some relief from their present condition when the rich man knew it was unsafe for him to live in a community where there are dissatisfied workingmen, for they would solve the labor problem. I don't know whether you are Democrats or Republicans, but whichever you are, you worship at the shrine of heaven. John Brown, Jefferson, Washington, Patrick Henry and Hopkins said to the people, 'The law is your enemy.' We are rebels against it. The law is only framed for those that are your enslavers. (A voice: 'That is true.') Men in their blind rage attacked McCormick's factory and were shot down by the law in cold blood, in the city of Chicago, in the protection of property. Those men were going to do some damage to a certain person's interest who was a large property owner; therefore the law came to his defense; and when McCormick understood to do some injury to the interest of those who had no property, the law also came to his defense and not to the workingman's defense, when he, McCormick, attacked him and his living. (Cries of 'No.') There is the difference. The law makes no distinctions. A million men hold all the property in this country. The law has no use for the other fifty-four millions. (A voice: 'Right enough.') You have nothing more to do with the law except to lay hands on it and throttle it until it makes its last kick. It turns your brothers out on the wayside, and has degraded them until they have lost the last vestige of humanity, and they are mere things and animals. Keep your eye upon it, throttle it, kill it, stab it, do everything you can to wound it—to impede its progress. Remember, before trusting them to do anything for yourself, prepare to do it yourself. Don't turn over your business to anybody else. No man deserves anything unless he is man enough to make an effort to lift himself from oppression."

Then there was an interruption on account of a storm. Everybody started. Parsons suggested they adjourn to

Zepf's Hall. Fielden said no, the people were trying to get information, and he would go on. And he went on:

"Is it not a fact that we have no choice as to our existence, for we can't dictate what our labor is worth? He that has to obey the will of another is a slave. Can we do anything except by the strong arm of resistance? The Socialists are not going to declare war, but I tell you war has been declared upon us; and I ask you to get hold of anything that will help to resist the onslaught of the enemy and the usurper. The skirmish lines have met. People have been shot. Men, women and children have not been spared by the capitalists and minions of private capital. It has no mercy—so ought you. You are called upon to defend yourselves, your lives, your future. What matters it whether you kill yourselves with work to get a little relief, or die on the battlefield resisting the enemy? What is the difference? Any animal, however loath-

some, will resist when stepped upon. Are men less than snails or worms? I have some resistance in me; I know that you have, too. You have been robbed, and you will be starved into a worse condition."

That is all I have. Some one alongside asked if the police were coming. Was facing northeast, looked down the street, saw a file of police about the middle of Randolph street. Put my paper in my pocket and ran right over to northwest corner of Randolph and Desplaines; when I reached the sidewalk, the first rank of the police got to the southwest corner of Randolph and Desplaines; stood there until some of the police marched by, and the first thing I knew, heard an explosion; then a volley of twenty or thirty shots; thought it time to leave, so turned down Randolph street. While running heard a great lot of shots, and somebody tumbled right in front of me, but I didn't stop to see whether he was hurt; didn't see who shot first. As to the temper of the crowd, it was just an ordinary meeting.

Cross-examined. It was peaceable and quiet for an out-door meeting; didn't see any turbulence; thought the speeches made that night were a little milder than I had heard them make for years; all set speeches, about the same thing; didn't hear any of them say or force that night. Going to me from the Tri-M. My instructions from the same office were to take only the most incendiary part of the speeches. When Parsons spoke about the Cincinnati meeting he said he had been at Cincinnati and seen the procession; heard the announcement to the crowd

to disperse, distinctly; did not hear Mr. Fielden say: "There come the bloodhounds now; you do your duty and I'll do mine;" I heard nothing of that import.

M. M. Thompson. Am employed in the dry-goods business of Marshall Field & Co.; was at Haymarket Square on evening of May 4th; somebody handed me a circular headed "Revenge," and signed "Your Brothers;" asked for Parsons; Parsons didn't respond; he then got down, and Schwab and Spies walked into that alley at Crane Bros.' near the wagon; the first word I heard between Schwab and Spies was "pistols;" the next word was "police;" I walked just a little nearer the alley, and just then Spies said: "Do you think one is enough, or hadn't we better go and get more?" They then walked into the crowd and in a few minutes came back; Schwab said: "Now, if they come, we will give it to them;" Spies replied he thought they were afraid to bother with them; they came on, and before they got up near the wagon they met a third party; this here (indicating picture of Schnaubelt, identified) is, I think, the third man; think his beard was a little longer than in this picture; saw the third man on the wagon afterwards; whatever it was that Spies gave him, he stuck it in his pocket on the right-hand side; Spies then got on the wagon and spoke to the crowd; stayed until Mr. Fielden commenced to speak; then I left.

*Cross-examined.* Had never seen any of the defendants before that night; the conversation between Spies and Schwab was in English; don't understand German; didn't hear any words between "police" and "pistols;" when I drew up within a foot of the alley, I heard: "Do you think one enough, or had we better go for more?" I only knew Mr. Spies' voice from what I heard him ask on the wagon; Spies was the one who used the words "pistols" and "police."

*August Huen.* Am a printer in the employ of Wehrer & Klein, set up the German part of the circular headed "Attention, Workingmen!" The last line read, "Workingmen, arm yourselves and appear in full force;" Mr. Fischer wrote it.

*Hugh Hume.* Am reporter for the *Inter-Ocean*; saw Mr. Fielden and other defendants in the cells at the Central Station, about midnight, between the 5th and 6th of May; Spies said he had been at the Haymarket meeting; he had gone up there to refute the statements of the capitalistic press in regard to what he had said at McCormick's; up at McCormick's he had been talking to a lot of people whom he could not influence—all good Catholics; during his speech on the Haymarket, some people had shown a disposition to hang McCormick; he had told them not to make any threats of that kind; he had said, "When you want to do a thing of that kind, don't talk so much about it, but go out and do it;" he then said to me that the people had reached a condition where

they were willing to do any violence, and he had advocated violence of that kind; it was necessary to bring about the revolution that the Socialists wanted; he said he had advocated the use of dynamite; I asked him if he was in favor of killing police officers with dynamite; he said the police represented the capitalists and were enemies of theirs, and when you have an enemy he has got to be removed; Spies said he didn't know anything about the bomb being exploded until afterwards; he had heard a noise that resembled the sound of a cannon, and thought the police were firing over the heads of the people to frighten them; he said he considered all laws as things you could get along without; they were inimical to the best interests of the people and of the social growth; he did not think that dynamite was in his office when he left it, and had an idea that the police put that dynamite there to get a case on him; Mr. Fielden was suffering somewhat from his wound; when I asked him how the Haymarket affair accorded with his ideas of Socialism, he said, "You are on dangerous ground now; there is an argument, though, that we have, that is to the effect that if you cannot do a thing peaceably, it has got to be done by force;" Fielden said, as to the number of Socialists in Chicago, that there were a number of groups here, containing 250 men; those were recognized Socialists, but they had people from all over the city, from nearly every wholesale house; but those people are afraid to come out yet, only



awaiting an opportunity; he spoke about the decision of the Supreme Court prohibiting military companies from marching around with arms; he was inclined to think that the decision was not right; I had a short interview with Schwab; all he had to say was that Socialism was right, even with the blood shed at the Haymarket.

*Harry L. Gilmer.* Am a painter; was at the Haymarket meeting; Fielden was speaking when I came there; I stepped back into the alley between Crane Bros'. building and the building immediately south of it; somebody in front of me on the edge of the sidewalk said, "Here comes the police." There was a sort of rush to see the police come up. There was a man came from the wagon down to the parties that were standing on the south side of the alley; he lit a match and touched it off, something or another that another man held—the fuse commenced to fizzle, and the other man gave a couple of steps forward, and tossed it over into the street; the man that lit the match on this side of him, and two or three of them stood together, and he turned around with it in his hand, took two or three steps that way, and tossed it that way, over into the street; knew the man by sight who threw that fizzing thing into the street; have seen him several times at meetings at one place and another in the city; do not know his name; was about five feet ten inches high, somewhat full-chested, and had a light sandy beard, not very long; his eyes set somewhat back

in his head; this here (indicating photograph of Schnaubelt) is the man that threw the bomb out of the alley; this here (pointing to Spies) is the man who came from the wagon and lit the fuse; that man over there (Fischer) was one of the parties; after the bomb was thrown these parties immediately left through the alley; the firing commenced immediately afterwards, and my attention was attracted by the firing, and I paid more attention to that than anything else.

*Cross-examined.* Formerly resided in Des Moines, Iowa, Fort Dodge, Iowa, Kansas City, Mo., and in Chicago; first told a man by the name of Allen, another party whom I don't know, and a reporter of the Times, that I saw the match lighted, and saw the man who threw the bomb; when I stepped into the alley that group of men was right across the alley on the south side, the lamp was burning on the corner and it shone right down; could see the persons in that party distinctly, could see their countenances, they could see myself; could hear them talk, they spoke German; didn't understand them; Mr. Spies is the man that came down in the alley and lighted the bomb; he was talking with somebody, would be inclined to think it was this gentlemen (Schwab); have very little doubt but Fischer is the man I saw in the group; think I saw Mr. Parsons there that night talking to some ladies; on the street-car on my way home I didn't talk with anybody about the occurrence; heard people speak about the

Haymarket affair in the restaurant, on Madison street, where I took my breakfast; did not say to them anything about my seeing the match lighted and the bomb thrown; the first time I told Mr. Grinnell of my experience at the Haymarket was when I made my second visit to the Central Station, on Sunday after the Haymarket meeting; I only told Mr. Grinnell that I could identify the person that threw the bomb, if I saw him; told him at that time that I saw one man strike a match and light the fuse, and another man throw the bomb; Mr. Fischer was brought in; identified him as being one of the men who composed the group in the alley.

*Martin Quinn*, (recalled.) Found at Engel's house, a machine for making bombs; Engel said it had been left there by some man about four or five months previous to that time; Mrs. Engel gave a description of the man who left the machine as a man with long black whiskers and pretty tall; there had been a meeting at Turner Hall, where this man had made a speech about the manufacture of bombs, and the next thing was, this machine was brought over, and Engel had said to him he wouldn't allow him to make any bombs in his basement; so the man went away; Engel didn't know where he was.

*John Bonfield* (recalled.) Was at the Central Station when Officer Quinn brought Engel and the machine there; it is a blast furnace in miniature—a home-made one.

*Louis Mahlendorf*. Am a tinner by trade; made this machine

for Engel over a year ago; I cut off the iron and formed it up; another gentleman, a kind of heavy-set man with long beard, was with him when he ordered it; Mr. Engel took it away with him.

*Hermann Schuetzler*. Am a detective; arrested Lingg and searched the room on Sedgwick street, found a round lead bomb in a stocking; in another stocking I found a large navy revolver; both revolver and bomb were loaded; we found a ladle and some tools, a cold chisel and other articles; on the way to the Chicago Avenue Station I asked Lingg why he wanted to kill me; he said: "Personally, I have nothing against you, but if I had killed you and your partner I would have been satisfied; I would have killed myself if I had got away with you and your partner."

*Jacob Loewenstein*. Am a detective, assisted Schuetzler in arresting Lingg; after we had vanquished him Lingg said several times: "Shoot me right here, before I will go with you. Kill me!"

*John B. Murphy*. Am a physician, was called to the Desplaines Street Station after the Haymarket explosion, dressed Barrett, who was crying with severe pain; he had a large wound in his side, much larger than could be made by an ordinary pistol bullet.

*E. G. Epler*. Am a physician, dressed a wound of Fielden between eleven and twelve at night, May 4th; the wound was on the left side of the left knee joint, the bullet having passed in underneath the skin and

passed out again five inches from the point of entry; he said he was crawling on the pavement trying to get away from the crowd when he received the injury, and the bullet glanced off from the pavement and struck him in that position.

*Michael Hoffman.* Am a detective; these two bombs I found at the corner of Clyde and Clybourn avenue, near Ogden's Grove, under the sidewalk; got two coils of fuse, a can of dynamite and a box of caps at the same time; I found these two pieces of gas-pipe at 509 North Halsted street, under the house of John Thielen, who was arrested, with two cigar-boxes full of dynamite and two boxes of cartridges, one rifle, one revolver.

*Michael J. Schaack.* Am police captain of the Fifth Precinct, at East Chicago Avenue Station; have been connected with the force for eighteen years; have been captain one year; Engel and Lingg were arrested and confined in my station; Lingg told me he had lived at 442 Sedgwick street; he had been out of work for about four weeks; asked him whether he was at the meeting held in the basement of 54 West Lake street on Monday night, and he said, "Yes." On night of May 4th, he said, he was at home—not all the evening; he said he had made some bombs to use them himself; said he had reason for being down on the police; they had clubbed him out at McCormick's; said he was down on capitalists, and found fault with the police for taking the part of the capitalists; if the capital-

ists turned out the militia and the police force with their Gatling guns, they couldn't do anything with revolvers, and therefore they had adopted these bombs and dynamite; he said he had learned to make bombs in scientific books of warfare published by Most, of New York; he had got his dynamite on Lake street, somewhere near Dearborn, and had bought some fuse and caps, and told me what he paid for it; he had not used up all his dynamite; he said he had made bombs of gas-pipe, and also of metal and lead mixed; he found the gas-pipe on the street sometimes; the lead he got about the same way; he said the bombs they found in his place were all he made; we put Mrs. Seliger face to face with him, and she accused him that he had commenced making bombs a few weeks after he came to their house; he looked at the woman, but didn't say anything; John Thielen, who was arrested at the time, faced him too; Lingg admitted he had given to Thielen the two cigar-boxes full of dynamite and the two bombs which Officer Hoffman brought to me; at the same time Lingg looked right square at Thielen and shook his head for him to keep still; Thielen said to him, "Never mind, you might as well tell it; they know it all, anyhow." In Lingg's trunk I discovered a false bottom, and in there I found two long cartridges of dynamite, and some fuse four inches long, with caps on, and a big coil of fuse; asked Lingg if that was the dynamite he used in his bombs, and he said yes; told me he had been

in this country since last July or August; he had been a Socialist in Europe. Engel said he had been for a little while at the 54 West Lake Street meeting but made no speech there; several days afterwards I asked him why he didn't stop that nonsense, and he said: "I promised my wife so many times that I would stop this business, but I can't stop it; what is in me has got to come out; I can't help it that I am so gifted with eloquence; it is a curse; it has been a curse to a good many other men; a good many men have suffered already for the same cause, and I am willing to suffer and will stand it like a man;" he mentioned Louise Michel as having taken a leading part in the Anarchist business; Engel said on the evening of May 4th he was at home lying on the lounge.

*Frederick Drew.* Saw some cans underneath the sidewalk at my home, No. 351 North Paulina street, about three miles from the Haymarket, and turned them over to Mr. Schaack.

*Michael Whalen.* Am a detective; saw the cans referred to by the preceding witness in the yard at No. 351 North Paulina street, there were four of those cans, one of which they emptied.

*Daniel Coughlin.* Am a police officer; experimented with one of the cans found at North Paulina street, with a fulminating cap and fuse about eight inches long; after igniting the fuse an explosion was caused which shattered the can, throwing the contents, some kind of vitriol, four or five feet around.

*Charles E. Prouty.* Am manager of a gun-store at 53 State street; Mr. and Mrs. Engel came to the store the previous fall; they made inquiries in regard to some large revolvers; found one there that seemed to be satisfactory, and wanted to know at what price they could get a quantity of them, perhaps one or two hundred, and wanted to buy that one and pay for it and present it at some meeting of some society; a week or two after they returned, said the pistol was satisfactory, and wanted a lot; I wrote East, and found the lot had been disposed of; they were disappointed, but said they had found something else for a little less money that would answer the purpose, and with that they left our store; Mrs. Engel comes frequently to our store; she has a little store on the West Side, and buys fishing-tackle and other things in our line; sold cartridges to them in a small way, as she might want them in her store; when I spoke of guns I meant large revolvers, something about seven-inch barrel—I think 44 or 45-caliber, at \$5.50 apiece; when I stated the price was very cheap they replied they didn't care to make profit on them, it was for a society.

*William J. Reynolds.* Am in the employ of D. H. Lamberson & Co., gun business; about February of this year Mr. Parsons came to our store; said he wanted to buy a quantity of revolvers; I agreed to write and get a quotation of the revolver; he came in again, and I quoted him a price upon it; he did not purchase any revolvers, and was

in once or twice after that; he seemed undecided.

*Thomas McNamara.* Am a police officer; found thirty loaded and one empty gas-pipe bombs under the sidewalk on Bloomingdale Road and Robey street; the loaded bombs were fixed with caps and fuse; they were in an oil-cloth; this is about four blocks from Wicker Park.

*Prof. Walter S. Haines.* Am professor of chemistry in Rush Medical College; have examined several pieces of metal at the request of the State's Attorney; Lingg bombs Nos. 1, 3 and 4 were found to consist chiefly of lead, with a small percentage of tin and traces of antimony, iron and zinc; Lingg bomb No. 2 contained more tin, consequently less lead; also a little more antimony and a little more zinc; the Murphy bomb was composed of a small proportion of tin, chiefly lead and traces of antimony, iron and zinc; the amount of tin was in round numbers 1.6 per cent.; the Degan bomb contained in round numbers 1.6 or 1.7 per cent.; the remainder was lead, with traces of antimony, iron and zinc; the Spies bomb consisted chiefly of lead with a small quantity of tin, about 1.1 per cent., in round numbers, with traces of antimony, iron and zinc; the different pieces of the same bomb differed slightly in the proportions of the metals present; the Degan bomb contained slightly more tin than what I call the Murphy bomb; there is no commercial substance with which I am acquainted that has such a composition as these bombs; commercial lead fre-

quently contains traces of other substances, but, as far as I know never tin; Lingg bomb No. 2 had a minute trace of copper.

*Prof. Mark Delafontaine.* Am teacher of chemistry in the High School in this city; have been a chemist for over thirty years; made an examination of the substances described by Prof. Haines, compared results with him, and they agreed as closely as they can; found the piece of candlestick to be a mixture of antimony, tin, lead, zinc and a trace of copper; made experiments with old lead pipes upon which there was solder; took a piece of old lead pipe that had been very much mended, had much solder put on; I melted it, analyzed it, and the amount of tin contained in the mixture was about seven-tenths of one per cent; don't know of any one commercial product of which the pieces of bomb that I examined could be composed; never found a sample of lead containing the least traces of tin.

*Theodore J. Bluthardt.* Am County Physician; I made a *post-mortem* examination upon the body of Mathias J. Degan, on the 5th day of May last; found a deep cut upon his forehead, another cut over the right eye and another deep cut, about two inches in length, on the left side; I found a large wound, apparently a gun-shot wound--a hole in the middle of the left thigh; found seven explosive marks on his right leg and two on the left leg; the large hole in the middle of the left thigh was the mortal wound caused by an explosive, a piece of lead that had penetrated the skin,

destroyed the inside muscles and lacerated the femoral artery, which caused bleeding to death; he had a wound on the dorsum of the left foot, also caused by a piece of lead, which forced its way through the bones of the ankle joint; the external appearance of that wound on that left thigh was that of a rifle

ball; Mathias J. Degan died of hemorrhage of the femoral artery, caused by this wound I described. Made *post-mortems* also on the bodies of John Barrett, George F. Muller, Tim Flavin, Michael Sheehan and Thomas Redden, policemen who were killed at the same time.

*Mr. Grinnell* introduced in evidence and read to the jury the following extracts—editorials and other articles—from the newspapers *Arbeiter Zeitung*, and *Alarm*:

#### ARBEITER ZEITUNG

February 23, 1885. The already approaching revolution promises to be much grander and more terrible than that at the close of the last century, which only broke out in one country. The common revolution will be general, for it makes itself felt everywhere and generally; it will demand more sacrifices, for the number of those over whom we have to sit in judgment is now much greater than that of the last century.

March 2, 1885. Our censure is not directed only against the workingmen of Philadelphia; it strikes especially and in much higher degree those dirty souls who carry on as a business the quieting of the working class under idle promises of reform in the near future. . . . That thing could not have happened in Chicago without placing for exhibition on the telegraph wires and cornices of houses a dozen cadavers of policemen, in pieces, for each broken skull of a workman. And this is due solely and purely to the revolutionary propaganda carried on here. . . . (We wonder) whether the workingmen of Chicago will take a lesson from this occurrence, and will at last supply themselves with weapons, dynamite, and prussic acid as far as that has not been done yet.

March 11, 1885. The community will soon have to decide whether to be or not to be: either the police must be, and then the community cannot be; or the community must be, and then the police cannot be; one only of the two is possible.

March 16, 1885. In all revolutionary action three different epochs of time are to be distinguished; first, the portion of preparation for an action, then the moment of the action itself, and finally that portion of time which follows the deed. All these portions of time are to be considered one after another.

In the first place, a revolutionary action should succeed. Then as little as possible ought to be sacrificed; that is, in other words, the danger of discovery ought to be weakened as much as possible,

and, if it can be, should be reduced to naught; this calls for one of the most important tactical principles, which briefly might be formulated in the words "saving of the combatants." All this constrains us to further explain the measures of organization and tactics which must be taken into consideration in such an action.

Mention was made of the danger of discovery. That is, in fact, present in all three of the periods of conflict. This danger is imminent in the preparation of the action itself, and, finally, after the completion thereof. The question is now, How can it be met?

If we view the different phases of the development of a deed, we have, first, the time of preparation. It is easily comprehensible for everybody that the danger of discovery is the greater, the more numerous the mass of people or the group is which contemplates a deed, and *vice versa*. On the other hand, the threatening danger approaches the closer, the better the acting persons are known to the authorities of the place of action, and *vice versa*. Holding fast to this, the following results: In the commission of a deed, a comrade who does not live at the place of action—that is, a comrade of some other place—ought, if possibility admits, to participate in the action; or, formulated differently, a revolutionary deed ought to be enacted where one is not known.

A further conclusion which may be drawn from what was mentioned is this: Whoever is willing to execute a deed has, in the first place, to put the question to himself, whether he is able or not to carry out the action by himself; if the former is the case, let him absolutely initiate no one into the matter, and let him act alone; but if that is not the case, then let him look, with the greatest care, for just as many fellows as he must have absolutely, not one more nor less; with these let him unite himself to a fighting group.

The founding of special groups of action or for war is an absolute necessity. If it were attempted to make use of an existing group to effect an action, discovery of the deed would follow upon its heels, if it should come to a revolutionary action at all, which would be very doubtful. It is especially true in America, where reaction has velvet paws, and where asinine confidentiality is from a certain direction directly without bounds. In the preparation already endless debates would develop; the thing would be hung up upon the big bell; it would be at first a public secret; and then, after the thing was known to everybody, it would also reach the long ears of the holy Hermandad (the sacred precinct of the watchman over the public safety), which, as is known to every man, woman, and child, hear the grass grow and the fleas cough.

In the formation of a group of action the greatest care must be exercised. Men must be selected who have head and heart in the right spot. Has the formation of a fighting group been effected?—has the intention been developed?—does each one see perfectly clear in the manner of the execution?—then action must follow with the greatest possible swiftness, without delay, for now they move

within the scope of the greatest danger simply from the very adjacent reason, because the selected allies might yet commit treason without exposing themselves in so doing.

In the action itself one must be personally at the place to select personally that point of the place of action and that part of the action which are the most important, and are coupled with the greatest danger, upon which depend chiefly the success or failure of the whole affair.

Has the deed been completed?—then the group of action dissolves at once without further parley, according to an understanding which must be had beforehand, leave the place of action, and scatter to all directions.

If this theory is acted upon, then the danger of the discovery is extremely small; yea, reduced to almost nothing; and from this point of view the author ventures to say thus and not otherwise must be acted if the advance is to be proper.

It would be an easy matter to furnish the proof, by the different revolutionary acts in which the history of the immediate past is so rich, that the executors sinned against the one or the other of the aforementioned principles, and that in this fact lies the cause of the discovery and the loss to us of very important fellow champions connected therewith; but we will be brief, and leave that to the individual reflection of the reader. But one fact is established; that is this: That all the mentioned rules can be observed without great difficulties; further, that the blood of our best comrades can be spared thereby; finally, as a consequence of the last mentioned, that light actions can be increased materially, for the complete success of an action is the best impulse to a new deed and the things must always succeed when the rules of wisdom are followed. A further question which might probably be raised would be this: In case a special or conditional group must be formed for the purpose of action, what is the duty, in that case, of the public groups or the entire public organization, in the view of the aforesaid actions? Well, the answer is very near at hand. In the first place, they have to serve as a covering, as a shield behind which one of the most effective weapons of revolution is bared; then these permanent groups are to be the source from which the necessary pecuniary means are drawn and fellow combatants are recruited; finally, the accomplished deeds are to furnish the permanent groups the material for critical illustration. These discussions are to wake the spirit of rebellion, that important lever of the advancing course of the development of our race, without which we would be forever nailed down to the state of development of a gorilla or an orang-outang. This right spirit is to be inflamed, the revolutionary instinct is to be roused, which still sleeps in the breast of man, although these monsters which, by an oversight of nature, were covered with human skin, are honestly endeavoring to cripple the truly noble and elevated form of man by the pressure of a thousand and again a thousand years,—to morally castrate the human race finally, the



means and form of conquest are to be found by untiring search and comparison, which enhance the strength of each proletarian a thousandfold and make him the giant Briareus, which alone is able to crush the ogres of capital.

March 23, 1885. Yet one thing more. Although every day brings the news of collisions between armed murder-serfs of the bourgeoisie with unarmed crowds of people (strikers and the like), we must ever and again read in the so-called workingmen's papers; discussions of the question of arming ought to be avoided in the associations of the proletarian. We characterize such pacifying efforts as criminal.

Each workingman ought to have been armed long ago. We leave it an open question whether whole corporations are able to completely fit themselves out in a military point of view, with all their numbers; but we say that each single one, if he has the necessary seriousness and the good will, can arm himself little by little very easily. Daggers and revolvers are easily to be gotten; hand grenades are cheaply to be produced; explosives, too, can be obtained; and finally, possibilities are also given to buy arms on installments. To give an impulse in that direction one should never tire of. For not only the revolution proper, approaching with gigantic steps, commands to prepare for it, but also the wage contests of a day demand of us not to enter into it with empty hands.

Let us understand the signs of the times; let us have a care for the present, that we will not be surprised by the future, unprepared.

April 8, 1885. That is something worth hearing: A number of strikers in Quincy yesterday fired upon their bosses, and not upon the scabs. This is recommended most emphatically for imitation.

May 5, 1885. When, anywhere, a small party of workingmen dare to speak of rights and privileges, then the "order" draw together all the murdering scoundrels of the whole city, and, if necessary, from the whole country, to put their sovereignty the more clearly before the sovereigns. In short, the whole power of the capital, that is, the entire government, is ever ready to suppress the petty demonstrations of the workingmen by force of arms, one after another, now here, then there. This would be quite different if the workingmen of the entire country could only see that their class is in this wise subjected, part by part, without condition and without reprieve. The workingmen ought to take aim at every member of the militia, and do with him as one would do with some one of whom it is known that he is after taking one's life. It might then sooner be difficult to obtain murdering tools.

Workingmen, arm yourselves. Let the butchery of Lemont be a lesson to you.

May 7, 1885. Before you lies this blissful Eden. The road to it lies over the smoking ruins of the old world. Your passport to it is that banner which calls to you in flaming letters the word "Anarchy."

June 19, 1885. It is scarcely necessary for us to say in conclusion that it would be an insane undertaking to meet the serfs of order with empty hands, and to allow one's self to be clubbed down and to be shot down without means of defense. Taking this into consideration, it appears clearly that it is more necessary than anything else to arm one's self as soon as possible. Therefore, workingmen, do arm yourselves with the most effectual means. The better you do this the quicker the fight is fought, the sooner the victory is yours. Do not delay, for that would be your ruin.

June 20, 1885. Enough is now said about the importance of being armed, and another question approaches us now which also must be discussed. We are to go to work to supply ourselves as quickly as possible with these useful things. The price of them is too high than that one could buy them himself. The writer of these lines expresses his opinion, which does not intend to be too previous, to this effect: that special groups ought to form themselves to this end, which are to accomplish these things incorporeal, and which collect and pay the money in small sums, optional with each one according to his means. Small contributions one can easily spare; one does not mind them, and he is in this way the sooner in fighting trim for the purposes. In explanation it must also be said that dynamite bears several names here in America; among others, it is known in trade also under the names of Hercules Powder and Giant Powder.

But we will not tire the reader any longer, and go about to close this article. The fable reports to us that founders of great and difficult works have been nursed by wild beasts, among others Romulus and Remus by a she-wolf; that is to be understood figuratively. It is not said that the founders of a great work must have something wolfish in their individuality, for such a beginning is ever the password in a fight, and in this it is meant for one to be a wild animal. Workingmen, fellows in misery, men of action: A creation greater, more important, higher, more elevated than one has even been, it is for us to found, and establish the temple of the unveiled goddess of Liberty upon the whole face of the globe. But to this end you must be wolves, and as such ye need sharp teeth. Workingmen, arm yourselves.

April 29, 1885. In the procession which marched past the Board of Trade there marched a strong company of well-armed comrades of the various groups. Let us remark here that, with perhaps few exceptions they were well armed, and that also the nitro-glycerine pills were not missing. They were prepared for a probable attack, and if it had come to a collision there would have been pieces. The cordons of the police could have been quite excellently adapted for experiments with explosives; about twenty detectives were loitering about the market square at the beginning, and then disappeared. That explains the keeping back of our otherwise impertinent order-scoundrels.

October 5, 1885. The question which presents itself to the wage-worker is this: Will you look on quietly that they eject in such manner those who have shown themselves most willing to be sacrificed, and that they are driven from house and home and persecuted with the whip of hunger,—will you or will you not? and if they do not want that, there is no other way than to become immediately soldiers of the revolutionary army, and establish conspiring groups, and let the ruins fall on the home of such.

October 8, 1885. All organized workingmen in this country, no matter what views they might have otherwise, should be united on one point,—they should engage in a general prosecution of Pinkerton's secret police. No day should pass without a report being heard from one place or another of the finding of a carcass of one of Pinkerton's. That this should be kept up until nobody would consent to become the bloodhound of these assassins.

At a meeting of the North Side Group at 58 Clybourn avenue, the following resolutions were adopted: This assembly declares that the North Side Group, I. A. A. pledges itself to work with all means for the introduction of the eight-hour day, beginning on the 1st of May, 1886. At the same time the North Side Group cautions the workingmen not to meet the enemy unarmed on the 1st of May, etc.

January 22, 1886. The eight-hour question is not, or at least should not be, the final end of the present organization but in comparison to the present state of things,—a progress not to be underrated. But now let us consider the question in itself,—How is the eight-hour day to be brought about? Why, the thinking workingman must see for himself, under the present power of capital in comparison to labor, it is impossible to enforce the eight-hour day in all branches of business otherwise than with armed force. With empty hands the workingmen will hardly be able to cope with the representatives of the club, in case, after the 1st of May of this year, there should be a general strike. Then the bosses will simply employ other men, so-called "scabs." Such will always be found.

The whole movement, then, would be nothing but filling the places with new men; but if the workingmen are prepared to eventually stop the working of the factories, to defend himself with the aid of dynamite and bombs against the militia, which of course will be employed. Then and only then can you expect a thorough success of the eight-hour movement. Therefore, workingmen, I call upon you, arm yourselves.

November 27, 1885. Letter Box.—S. Steel and iron are not on hand, but tin two or three inches in diameter. The price is cheap. It does not amount to fifty cents apiece.

December, 1885, January, February and March, 1886. Exercise in Arms.—Workingmen who are willing to exercise in the handling of arms should call every Sunday forenoon, at half-past nine, at No. 58 Clybourn avenue, where they will receive instructions gratuitously.

March 2, 15, 18 and 25, 1886. Revolutionary Warfare has ar-

rived, and is to be had through the librarian at 107 Fifth avenue, at the price of ten cents.

March 15, 1886. Letter Box.—Seven Lovers of Peace. A dynamite cartridge explodes not through mere concussion when thrown; a concussion primer is necessary.

January 6, 1886. A New Militia Law.—To return to the *Lehr und Wehr Verein*, we have already said that after the adoption of the law, the shallow water would gradually dry up. That lasted until about the fall elections of 1879, when at once the socialistic vote shrunk to 4,000 votes (in the spring there were over 12,000); then the whole "movement" to which (we) look back with unaccountable pride was stopped. What was done for the mass of the people has proved to be shallow and unclear. . . . Well, let us drop the subject. The lesson of 1877 has, meanwhile, been forgotten.

Politically they could not do much with it, and in a business sense—well, after the failure of the movement, there was not much the matter. To be brief, it did not pay any more to be a socialist or an armed proletarian. The thing didn't pay any more, and of the big pile there remained but a very little pile. But this little pile was a good one, and had lately achieved more than formerly the big pile. The army has since made a gigantic progress; where six years ago a thousand men had been armed with muskets, the majority of which are even today on hand, we find today a power which can neither be fought by law nor by force. Where a military organization existed formerly, the strength of which was well known, there exists today an invisible network of fighting groups, the dimensions of which are beyond any calculation, and therefore this organization is a timely one. To the above law we are partially indebted for that.

January 23, 1886. Brief is the space of time until the eventful day. The working people feel that something must be done. The conditions force them to wake up from slumber. Already an immense mass is without means of subsistence. They are more and more meagre. Capital sucks the marrow out of the bones of the workmen.

But why do we complain? Why do we murmur? We have no right to. Do we not know that all the misery, all the want, are the necessary consequences of the present state of society? As long as we admit that we are pariahs, that we are born to submit our necks as slaves under the whip of hunger, of extortioners; as long as we admit that, we have no right to complain. Therefore, associates in misery, for the pressure has finally become unbearable, do not let us treat peaceably with our deadly enemies on the 1st of May. We do not want to cheat ourselves for the hundredth time that we would get from them in a peaceable and harmonious way even the least for the betterment of our situation. We have so many examples and experiences that even the large and indifferent mass does not believe any more that an agitation which tends to ameliorate the condition of the workmen in a harmonious way would be of any purpose to those people, and I, for one, think they are right.

On the 1st of May, also, we will have an example of how harmoniously the capitalists will have our skulls crushed by their hirelings, if, out of sheer love of harmony, we will stand by with our fists in our pockets. He who employs the best means of battle, and uses them, is the victor. Force is right (by Bismarck); and if once we have seen that, on account of our unanimity and the modern means of warfare, we have the power, then we will also see we have the right; and that it is a great stupidity to work for that rabble of parasites instead of ourselves.

Therefore, comrades, armed to the teeth, we want to demand our rights on the 1st of May; in the other case there are only blows of the club for you.

February 17, 1886. . . . That the conflict between capitalism and workmen is taking constantly a sharper form is to be hailed. . . . Hundreds and thousands of reasons indicate that force will bring about the decisive results in the battle for liberty, and the more conscious the masses are in that conflict of their irresistible power, the nearer will be the approaching spring tide of the people.

March 2, 1886. The order-scoundrels beamed yesterday morning in their full glory. With the help of pickpockets, the natural allies of professional cut-throats, who otherwise call themselves also detectives, they succeeded yesterday in taking seventy scabs to the factory, accompanied also by scoundrels of the secret service, to give a better appearance. This morning the number of scabs which went back to work was materially increased.

At this opportunity it was once again seen for what purpose the police existed,—to protect the workingman if he works for starvation wages and is an obedient serf, to club him down when he rebels against the capitalistic herd of robbers. Force only gives way to force. Who wants to attack capitalism in earnest must overthrow the body-guards of it, the well-drilled and well-armed “men of order” and kill them, if he does not want to be murdered himself. But for this is needed an armed and systematically drilled organization. The time up to the 1st of May is short. Look out.

March 19, 1886. The only aim of the workmen should be the liberation of mankind from the shackles of the existing damnable slavery. Here in America, where the workingman possesses yet the freedom of meeting, of speech, and of the press, most should be done for the emancipation of suffering mankind. But the press gang and the teachers in the schools do all in their power to keep the people in the dark. Thus everything tends to degrade mankind more and more from day to day, and this effects a “beastening,” as is observable with Irishmen, and more apparent, even, with the Chinese.

If we do not soon bestir ourselves for a bloody revolution, we cannot leave anything to our children but poverty and slavery. Therefore prepare yourselves in all quietness for the revolution.

April 20, 1886. As long as the people in the kitchen of life are satisfied with the smell of the roast, and feeds his empty stomach

with the idea of national greatness, national riches, national liberty of the polls, the glutton is always for liberty. Why not? It is useless to others and he feels comfortable with it. Freedom of making contracts, most sacred constitutional right of mankind, why shouldst thou not be welcome to gentlemanly gluttons? . . . It is true that hundreds have armed themselves. But thousands are still unarmed. Every trades-union should make it obligatory to every member to keep a good gun at home, and ammunition. The time is probably not very far where such neglect would be bitterly felt, and the governing class is prepared, and their demands and their importunities are backed by muskets and Gatling guns. Workingmen, follow this example.

April 21, 1886. The love for law, on the part of the workingman, is not so well established if put to the test. But the hypocritical peace assurances in quiet times are in the way of preparations for serious conflict. When it comes to serious occasions it unfortunately happens that very often the workingmen break their heads on the walls of the law. The desire to ignore the law is there, but it remains a desire. Possible action means to remain unorganized and to stand anything that the extortioner may see fit to do.

He who submits to the present order of things has no right to complain about capitalistic extortion, for order means sustaining that. And he who revolts against the institutions vouchsafed by the Constitution and the laws is a rebel, and has no right to complain if he is met by soldiers. Every class defends itself as well as it can. A rebel who puts himself opposite the mouth of the cannons of his enemies with empty fists is a fool.

April 28, 1886. What anarchists have predicted months ago, they have realized now. In quiet times the shackles of law were forged to apply them in tempestuous times. From dusty garrets they have fetched their musty law books, and so, by a practical application of American liberty, tried to build a wall against the stream of the laborers' movement.

Well, after you have erected protecting walks in the shape of laws we will have to break them. The theory of the homeopath—"like cures like"—is applicable here. The power of the associate manufacturers and their State must be met by labor associations. The police and soldiers who fight for that power must be met by armed armies of workingmen; the logic of facts requires this; arms are more necessary in our times than anything else. Whoever has no money, sell his watch and chain to buy firearms for the amount realized. Stones and sticks will not avail against the hired assassins of the extortionists. It is time to arm yourselves.

What a modest demand, the introduction of the eight-hour day, and yet a corps of madmen could not demean themselves worse than the capitalistic extortioners. They continually threaten with their disciplined police and their strong militia, and those are not empty threats indeed. This is proved by the history of the last few years. It is a nice thing, this patience, and the laborer, alas, has too much of

this article, but one must not indulge in a too frivolous play with it. If you go further, his patience will cease; then it will be no longer a question of the eight-hour day, but a question of emancipation from wage slavery.

April 29, 1886. If the legitimate means of the thieves and scoundrels who practice extortion on their fellow men are exhausted, then they resort to force. A wage slave who is not utterly demoralized should always have a breechloader and ammunition in his house.

April 30, 1886. What will the 1st of May bring? The workingmen bold and determined. The decisive day has arrived. The workingman, inspired by the justice of his cause, demands an alleviation of his lot, a lessening of his burden. The answer, as always, is: "Insolent rabble! Do you mean to dictate to us? That you will do to your sorrow. Hunger will soon rid you of your desire for any notions of liberty. Police, executioners, and militia will give their aid." Men of labor, so long as you acknowledge the gracious kicks of your oppressors with words of gratitude, so long you are faithful dogs. Have your skulls been penetrated by a ray of light, or does hunger drive you to shake off your servile nature, you offend your extortioners. They are enraged, and will attempt, through hired murderers, to do away with you like mad dogs.

May 1, 1886. Bravely forward. The conflict has begun. An army of wage laborers are idle. Capitalism conceals its tiger claws behind the ramparts of order. Workmen, let your watchword be "No compromise." Cowards to the rear. Men to the front. The die is cast. The 1st of May has come. For twenty years the working people have been begging extortioners to introduce the eight-hour system, but have been put off with promises. Two years ago they resolved that the eight-hour system should be introduced in the United States on the 1st day of May, 1886. The reasonableness of this demand was conceded on all hands. Everybody, apparently, was in favor of shortening the hours, but as the time approached a change became apparent. That which was in theory modest and reasonable became insolent and unreasonable. It became apparent at last that the eight-hour hymn had only been struck up to keep the labor dunces from socialism.

That the laborers might energetically insist upon the eight-hour movement never occurred to the employers. And it is proposed again to put them off with promises. We are not afraid of the masses of laborers, but of the pretended leaders. Workmen, insist upon the eight-hour movement. To all appearances it will not pass off smoothly. The extortioners are determined to bring their laborers back to servitude by starvation. It is a question whether the workmen will submit, or will impart to their would-be murderers an appreciation of modern views. We hope the latter.

It is said that on the person of one of the arrested comrades in New York a list of membership has been found, and that all the comrades compromised had been arrested. Therefore, away with all rolls of membership, and minute books, where such are kept.

Clean your guns, complete your ammunition. The hired murderers of the capitalists—the police and militia—are ready to murder. No workman should leave his house in these days with empty pockets.

May 2, 1886. Letter Box.—Y. Come Monday night.

Even where the workmen are willing to accept a corresponding reduction of wages with the introduction of the eight-hour system, they were mostly refused. "No, ye dogs: you must work ten hours; that's the way we want it, we're your bosses." Something like this was the answer of the majority translated into intelligible language.

In the face of this fact, it is pitiful and disgusting—but, more than that, it is treacherous—to warn the strikers against energetic uncompromising measures.

Everything depends upon quick and immediate action. The tactics of the bosses are to gain time; the tactics of the strikers must be to grant them no time. By Monday or Tuesday the conflict must have reached its highest intensity, else the success will be doubtful. Within a week the fire, the enthusiasm, will be gone, and then the bosses will celebrate victories.

May 3, 1886. A hot conflict. The determination of the radical elements brings the extortioners in numerous instances to terms. The capitalistic press has good grounds for abusing the Reds. Without them no agitation. Numerous meetings. The general situation at noon today was encouraging. A considerable number of extortioners had capitulated this morning, and further capitulations are looked for in the course of the day. The freight-handlers were marching in full force from depot to depot at noon today. It was rumored that "scabs" had been imported from Milwaukee.

The railroad depots are occupied by special policemen, while the municipal minions of order, under the command of five lieutenants, have entrenched themselves in the armory. The arch-rascals have made provisions for good victuals and drink. The laborers in the stoneyards have formed a union; . . . they went on a strike. The stonecutters and masons are compelled to join in the strike. A strike will probably take place in the lumber districts. The brewers plan a strike if their bosses do not fully accede to their demand today. In the furniture business strike and lock-out respectively still continue. . . . The cabinet-makers' union will make no compromise. The metal workers are confident of victory. The number of strikers today cannot be determined, but will probably amount to 40,000.

Courage, courage, is our cry. Don't forget the words of Herways: "The host of the oppressors grows pale, when thou, weary of thy burden, in the corner putteth the plow; when thou sayest, "It is enough."

May 4, 1886. (Written by Spies):

Blood—Lead and Powder as a Cure for Dissatisfied Workmen!—About Six Laborers Mortally, and Four Times That Number Slightly Wounded!—Thus Are the Eight-hour Men to be Intimidated!—This is Law and Order!—Brave Girls Parading the City!—The Law



and Order Beast Frightens the Hungry Children Away With Clubs!—General News.—Six months ago, when the eight-hour movement began, there were speakers and journals of the I. A. A. who proclaimed and wrote: "Workmen, if you want to see the eight-hour system introduced, arm yourself. If you do not do this you will be sent home with bloody heads, and birds will sing May songs upon your graves." "That is nonsense," was the reply. If the workmen are organized they will gain the eight hours in their Sunday clothes. Well, what do you say now? Were we right or wrong? Would the occurrence of yesterday have been possible if our advice had been followed?

Wage-workers, yesterday the police of this city murdered at the McCormick factory—so far as it can now be ascertained—four of your brothers, and wounded, more or less seriously, some twenty-five more. If brothers who defended themselves with stones (a few of them had little snappers in the shape of revolvers) had been provided with good weapons and one single dynamite bomb, not one of the murderers would have escaped his well-merited fate. As it was, only four of them were disfigured. That is too bad. The massacre of yesterday took place in order to fill the forty thousand workmen of this city with fear and terror—took place in order to force back into the yoke of slavery the laborers who had become dissatisfied and mutinous. Will they succeed in this? Will they not find at last that they miscalculated? The near future will answer this question. We will not anticipate the course of events with surmises.

The employees in the lumber-yards on the South Side held a meeting yesterday afternoon at the Black Road, about one quarter mile north of McCormick's factory for the purpose of adopting resolutions in regard to their demands, and to appoint a committee to wait upon a committee of lumber-yard owners, and present the demands which had been agreed upon.

It was a gigantic mass that had gathered. Several members of the lumber-yard union made short addresses in English, Bohemian, German and Polish. Mr. Fehling attempted to speak, but when the crowd learned that he was a socialist, he was stoned and compelled to leave the improvised speaker's stand on a freight car. Then after a few more addresses were made, the president introduced Mr. August Spies, who had been invited as a speaker. A Pole or Bohemian cried out, "That is a socialist!" and again there arose a storm of disapprobation, and a roaring noise, which proved sufficiently that these ignorant people had been incited against the socialists by their priests. But the speaker did not lose his presence of mind. He continued speaking, and very soon the utmost quiet prevailed. He told them that they must realize their strength over against a little handful of lumber-yard owners; that they must not recede from the demands once made by them; the issue lay in their hands; all they needed was resolution, and the "bosses" would be compelled to, and would, give in.

At this moment some persons in the background cried out (either

in Polish or Bohemian), "On to McCormick's! Let us drive off the scabs!" About two hundred men left the crowd and ran towards McCormick's.

The speaker did not know what was the matter, and continued his speech. When he had finished, he was appointed a member of a committee to notify the "bosses" that the strikers had no concessions to make. Then a Pole spoke. While he spoke, a patrol wagon rushed up towards McCormick's. The crowd began to break up. In about three minutes several shots were heard near McCormick's factory, and these were followed by others. At the same time about 75 well-fed, large and strong murderers, under the command of a fat police lieutenant, were marching toward the factory, and on their heels followed three patrol wagons besides, full of law-and-order beasts; 200 policemen were on the spot in less than ten or fifteen minutes, and the firing on fleeing workmen and women resembled a promiscuous bush-hunt. The writer of this hastened to the factory as soon as the first shots were fired, and a comrade urged the assembly to hasten to the rescue of their brothers who were being murdered, but no one stirred. "What do you care for that?" was the stupid answer of poltroons brought up in cowardice. The writer fell in with a young Irishman who knew him. "What miserable sons of b—— are those," he shouted to him, "who will not turn a hand while their brothers are being shot down in cold blood? We have dragged away two. I think they are dead. If you have any influence with the people, for Heaven's sake, run back and urge them to follow you." The writer ran back. He implored the people to come along—those who had revolvers in their pockets—but it was in vain. With an exasperating indifference they put their hands in their pockets and marched home, babbling as if the whole affair did not concern them in the least. The revolvers were still cracking, and fresh detachments of police, here and there bombarded with stones, were hastening to the battle ground. The battle was lost!

It was in the neighborhood of half past three o'clock when the little crowd of between two and three hundred men reached McCormick's factory. Policeman West tried to hold them back with his revolver. A shower of stones for an answer put him to flight. He was so roughly handled that he was afterwards found about 100 paces from the place, half dead, and groaning fearfully. The small crowd shouted: "Get out, you d—d scab, you miserable traitors," and bombarded the factory windows with stones. The little guard-house was demolished. The "scabs" were in mortal terror, when at this moment the Hinman street patrol wagon, summoned by telephone, came rattling along with thirteen murderers. When they were about to make an immediate attack with their clubs, they were received with a shower of stones. "Back! Disperse!" cried the lieutenant, and the next minute there was a report. The gang had fired on the strikers. They pretend, subsequently, that they shot over their heads. But, be that as it may, a few of the strikers had little snappers of revolvers, and with these returned the fire. In

the meantime other detachments had arrived, and the whole band of murderers now opened fire on the little company—20,000, as estimated by the police organ, the Herald, while the whole assembly scarcely numbered 8,000! Such lies are told. With their weapons, mainly stones, the people fought with admirable bravery. They laid out half a dozen bluecoats, and their round bellies, developed to extreme fatness in idleness and luxury, tumbled about, groaning on the ground. Four of the fellows are said to be very dangerously wounded; many others, alas! escaped with lighter injuries. (The gang, of course, conceals this, just as in '77 they carefully concealed the number of those who were made to bite the dust.) But it looked worse on the side of the defenseless workmen. Dozens who had received slight shot-wounds hastened away amid the bullets which were sent after them. The gang, as always, fired upon the fleeing, while women and men carried away the severely wounded. How many were really injured and how many were mortally wounded could not be determined with certainty, but we think we are not mistaken when we place the number of mortally wounded at about six, and those slightly injured at two dozen. We know of four, one of whom was shot in the spleen, another in the forehead, another in the breast, and another in the thigh. A dying boy, Joseph Doe-dick, was brought home on an express wagon by two policemen. The people did not see the dying boy; they saw only the two murderers. "Lynch the rascals!" clamored the crowd. The fellows wanted to break and hide themselves; but in vain. They had already thrown a rope around the neck of one of them, when a patrol wagon rattled into the midst of the crowd and prevented the praiseworthy deed. Joseph Hess, who had put the rope around his neck, was arrested.

The scabs were afterwards conducted, under the protection of a strong escort, down Blue Island avenue. Women and children gave vent to their indignation in angry shouts; rotten eggs whizzed through the air. The men about took things coolly, and smoked their pipes as on Kirmess day.

McCormick's assistant, Superintendent C. J. Bemly, was also wounded, and, indeed, quite severely.

The following strikers were arrested: Ignatz Erban, Frank Kohling, Joseph Schuky, Thomas Klafski, John Patolski, Anton Seviesski, Albert Supitar, Hugh McWhiffer, Anton Sternack, Nick Wolna and Thomas O'Connell.

The "pimp" McCormick, when asked what he thought of it, said: "August Spies made a speech to a few thousand anarchists. It occurred to one of these brilliant heads to frighten our men away. He put himself at the head of a crowd, which then made an attack upon our works. Our workmen fled, and in the meantime the police came and sent a lot of anarchists away with bleeding heads."

Last night thousands of copies of the following circular were distributed in all parts of the city. (And then follows the German portion of the Revenge circular.)

## THE ALARM:

October 18, 1884. One man, armed with a dynamite bomb, is equal to one regiment of militia, when it is used at the right time and place. Anarchists are of the opinion that the bayonet and Gatling gun will cut but sorry part in the social revolution. The whole method of warfare has been revolutionized by latter-day discoveries of science, and the American people will avail themselves of its advantages in the conflict of upstarts and contemptible braggarts who expect to continue their rascality under the plea of preserving law and order.

October 25, 1884. A weak opposition, or an opposition that is believed to be weak, will cause bloodshed, but an opposition that is known to be sufficiently strong for certain victory will command and obtain a bloodless surrender. This is why the communist and anarchists urges the people to study their school-books on chemistry and read the dictionaries and cyclopedias on the composition and construction of all kinds of explosives, and make themselves too strong to be opposed with deadly weapons. This alone can insure against bloodshed. Every person can get this knowledge inside of one week, and a majority now have one or more books containing all this information right in their own homes. And every man who is master of these explosives cannot be even approached by an army of men. Therefore, bloodshed being useless, and justice being defenseless, people will be forced to deal justly and generously with each other.

November 1, 1884. How can all this be done? Simply by making ourselves masters of the use of dynamite, then declaring we will make no further claim to ownership in anything, and deny every other person's right to be the owner of anything, and administer instant death, by any and all means, to any and every person who attempts to continue to claim personal ownership in anything. This method, and this alone, can relieve the world of this infernal monster called the "right of property."

Let us try and not strike too soon, when our numbers are too small, or before more of us understand the use and manufacture of the weapons. To avoid unnecessary bloodshed, confusion and discouragement, we must be prepared, know why we strike and for just what we strike, and then strike in unison and with all our might. Our war is not against men, but against systems; yet we must prepare to kill men who will try to defeat our cause, or we will strive in vain. The rich are only worse than the poor because they have more power to wield this infernal "property right," and because they have more power to reform, and take less interest in doing so. Therefore it is easy to see where the bloodiest blows must be dealt.

We can expect but few or no converts among the rich, and it will be better for our cause if they do not wait for us to strike first.

November 15, 1884. What, then, is the use of an army? What

is to prevent its destruction in the same manner? Dynamite is the emancipator! In the hand of the enslaved it cries aloud: "Justice, or—annihilation." But, best of all, the workingmen are not only learning its use; they are going to use it. They will use it, and effectually, until personal ownership—property rights—are destroyed, and a free society and justice becomes the rule of action among men. There will then be no need for government, since there will be none to submit to be governed. Hail to the social revolution! Hail to the deliverer—dynamite.

November 29, 1884. The moment you pay a man for what he produces he will take that pay and then spend his energies in taking advantage of somebody with it. Down with pay, and dynamite the man who claims it; and hang him who will not let his energies produce something. This is socialism.

Upon this principle, and this only, can all humanity be raised up, and upon this principle alone can we stop all this quarreling, robbing, starving, and throat-cutting. There is no reason on earth why any living being should have less of the benefits and pleasures of this world than———now possesses. The idea that the world can have no more than there are dollars to every representative is ridiculous nonsense. There isn't money enough in the world to represent the amount of fine combs and tooth-brushes that humanity ought to possess. Down with this infernal nonsense that we must measure everything by money. We have no just use for money, or for banks, or for brokers, or for insurers, or jailers, or for any other hoodlum classes who are wickedly wasting the energy of their whole lives. Nothing but an uprising of the people and a bursting open of all stores and storehouses to the free access of the public, and a free application of dynamite to everyone who opposes, will relieve the world of this infernal nightmare of property and wages. Down with such wretchedness nonsense. No rascality or stupidity is sacred because it is old. Down with it!

December 6, 1884. One dynamite bomb properly placed will destroy a regiment of soldiers,—a weapon easily made and carried with perfect safety in the pockets of one's clothing. The First Regiment may as well disband, for if it should ever level its guns upon the workingmen of Chicago, it can be totally annihilated.

November 29, 1884. The black flag! The emblem of hunger, unfurled by the proletariats of Chicago. The red flag borne aloft by thousands of workingmen on Thanksgiving day. The poverty of the poor is created by the robberies of the rich. Speeches, resolutions and a grand demonstration of the unemployed, the tramps and the misérables of the city. Significant incidents. . . .

Mr. Parsons then called for the resolutions, which were then read as follows: "Whereas we have outlived the usefulness of the wage and property system, that is now, and must hereafter cramp, limit, and punish all increase of production and can no longer gratify the necessities, rights, and ambitions of man; and Whereas the right of property requires four times more effort to adjust it between man

and man than is required to produce, manufacture, and distribute it; therefore, be it

"Resolved that the property rights should no longer be maintained or respected. That the great army of useless workers, among which are the lawyers, insurers, brokers, canvassers, jailers, police, politicians, armies and navies, including all useless employees, whose sole business is to adjust property claims between man and man, should be deprived of this useless and corrupting employment, and be allowed to spend their energies producing, manufacturing and delivering the necessities and luxuries of life. And this is impossible so long as man continues to pay or receive pay for production; therefore, be it further Resolved that no man shall pay for anything, or receive pay for anything, or deprive himself of what he may desire that he finds out of use or vacant.

"While none can eat more than they ought, under any system, or wear more than one suit of clothes at a time, or occupy more than one house at a time, yet as a free access to all will require more production; therefore, be it further Resolved that any person who will not spend a reasonable portion of energy in the production, manufacture, or distribution of the necessities, comforts and luxuries of life is the enemy of all mankind, and ought to be treated as such. He who will willfully or maliciously waste is no better. As this system cannot be introduced against existing ignorance, selfishness and distrust without the force of arms and strong explosives; therefore be it Resolved that when all stores, storehouses, vacant tenements, and transporting property are thrown open and held open to the free access of the general public; the good of mankind and the saving of blood requires that all forcible opposition should be dealt with summarily, as fast as it may present itself, etc."

January 13, 1885. We are told that force is cruel. But this is only true when opposition is less cruel. If the opposition is a relentless power, that is starving, freezing, exposing, and depriving tens of thousands, and the application of force would require less suffering while removing the old cause, then the force is humane. Seeing the amount of needless suffering all about us, we say a vigorous use of dynamite is both humane and economical. It will, at the expense of less suffering, prevent more. It is not humane to compel ten persons to starve to death when the execution of five persons would prevent it.

It is upon this theory that we advocate the use of dynamite. It is clearly more humane to blow ten men into eternity than to make ten men starve to death.

February 21, 1885. The deep-rooted, malignant evil which compels the wealth-producers to become the dependent hirelings of a few capitalistic czars cannot be reached by means of the ballot. The ballot can be wielded by free men alone; but slaves can only revolt and rise in insurrection against their despoilers. Let us bear in mind the fact that here in America, as elsewhere the worker is held in economic bondage by the use of force; and the employ-

ment of force, therefore, becomes a necessity to his economic emancipation! Poverty can't vote!

January 9, 1885. **The Right to Bear Arms.** The conspiracy of the ruling against the working classes in 1877; the breaking up of the monster meeting on Market Square; the brutal assault upon a gathering of furniture workers in Vorwart's Turner Hall; the murder of Tessmann; and the general clubbing and shooting down of peaceably-inclined wage-workers by the bloodhounds of "law and order,"—greatly enraged the producers in this city, and also convinced them that they had to do something for their future protection and defense. The result was the organization of an armed proletarian corps, known as the Lehr und Wehr Verein. About one and one-half years later this "corps" had grown so immensely that it numbered over 1,000 well-equipped and well-drilled men.

Such an organization the "good citizens" of our "good city" considered a menace to the common weal, public safety, and good order, as one might easily imagine, and they concluded that "something had to be done." And very soon after something was done. The State Legislature passed a new militia law, under which it became a punishable offense for any body of men, other than those patented by the governor and chosen as the guardians of "peace," to assemble with arms, drill, or parade the streets. This law was expressly aimed at the Lehr und Wehr Verein, who, as a matter of course, did not enjoy the sublime confidence and favor of "His Excellency."

Where there once was a military body of men publicly organized, whose strength could be easily ascertained, there exists an organization now whose strength cannot even be estimated; a network of destructive agencies of a modern military character that will defy any and all attempts of suppression. We don't grumble. Make more "laws" if you like.

February 21, 1885. **Dynamite!** of all the good stuff, this is the stuff. Stuff several pounds of this sublime stuff into an inch pipe, —gas or water pipe,—plug up both ends, insert a cap with a fuse attached, place this in the immediate neighborhood of a lot of rich loafers who live by the sweat of other people's brows, and light the fuse. A most cheerful and gratifying result will follow. In giving dynamite to the down-trodden millions of the globe, science has done its best work. The dear stuff can be carried around in the pocket without danger, while it is a formidable weapon against any force of militia, police, or detectives that may want to stifle the cry for justice that goes forth from the plundered slaves. It is something not very ornamental, but exceedingly useful. It can be used against persons and things; it is better to use it against the former than against bricks and masonry. It is a genuine boon for the disinherited, while it brings terror and fear to the robbers. It brings terror only to the guilty, and consequently the senator who introduced a bill in Congress to stop its manufacture and use must be guilty of something. He fears the wrath of an outraged

people that has been duped and swindled by him and his like. The same must be the case with the "servant" of the people who introduced a like measure in the Senate of the Indiana Legislature. All the good this will do. Like everything else, the more you prohibit it, the more it will be done. Dynamite is like Banquo's ghost; it keeps on fooling around somewhere or other, in spite of his satanic majesty. A pound of this good stuff beats a bushel of ballots all hollow, and don't you forget it. Our lawmakers might as well try to sit down on the crater of a volcano, or a bayonet, as to endeavor to stop the manufacture and use of dynamite. It takes more justice and right than is contained in laws to quiet the spirit of unrest. If workingmen would be truly free, they must learn to know why they are slaves. They must rise above petty prejudice and learn to think. From thought to action is not far, and when the worker has seen the chains, he need but look a little closer to find near at hand the sledge with which to shatter every link. The sledge is dynamite.

March 7, 1885. Our Agitators. The agitation trips of Comrades Gorsuch, Fielden, and Griffin during the past two weeks, was prolific of good results. Twelve American Groups were organized in different cities, and those united with the international are working to bring into the ranks of the revolutionary army the proletariats of contiguous districts. The Working-people's International Association now embraces eighty groups, scattered all over the United States, mainly in centres of industry, from which the propagandism radiates everywhere, the membership being many thousands. In Chicago, with thousands of members, five newspapers with increasing circulations are published. The good work goes bravely on, and exertions should be redoubled.

Agitation for the purpose of organization; organization for the purpose of rebellion against wage slavery,—is the duty of the hour.

March 21, 1885. How to Make Dynamite. The next issue of the *Alarm* will begin the publication of a series of articles concerning revolutionary warfare, viz.: "The manufacture of dynamite made easy." "Manufacturing bombs." "How to use dynamite properly." "Exercises in the use of dynamite by the military department of the United States and other countries." Each of these articles will be complete and thorough on the subject considered by them. Agents can order copies of paper containing the above information in advance.

April 18, 1885. The moment the abolition of a government is suggested, the mind pictures the uprising of a hundred little despotic governments on every hand, quarreling among themselves and domineering over the unorganized people. This fact suggests the idea that the present governments must be destroyed, only in a manner that will prevent the organization or rise of any and all other governments, whether it be a government of three men or three hundred million. No government can exist without a head, and by assassinating the head just as fast as a government head



appears, the government can be destroyed; and by this same process all other governments can be kept out of existence.

This is the policy of the Nihilist of Russia, and the moment it gets any popular support throughout civilization all governments will disappear forever. Those governments least offensive to the people should be destroyed last. All governments exist by the abridgment of human liberty, and the more government the less liberty. He alone is free who submits to no government. All governments are domineering powers, and any domineering power is a natural enemy to all mankind and ought to be treated as such.

Assassination will remove the evil from the face of the earth.

Man will always have and always need advisers, teachers, and leaders in all departments of life, but bosses, jailers, and drivers are unnecessary.

Man's leader is his friend. His driver is his enemy. This distinction should be understood, and the parties should be dealt with accordingly. Assassination properly applied is wise, just, humane, and brave. For Freedom, all things are just.

June 27, 1885. Written by August Spies. Though everybody nowadays speaks of dynamite,—that great force of civilization,—some with awe, others with delight, it may be said that but few have any knowledge of the general character and nature of this explosive. For those who will sooner or later be forced to employ its destructive qualities in defense of their rights as men, and from a sense of preservation, a few hints may not be out of place:

Dynamite may be handled with perfect safety, if proper care is used. It is a two-edged sword if handled by one who is not acquainted with its character. Dynamite, which is also known in the market as giant powder and Herculean powder, is a compound of nitro-glycerine and clay (China clay is the best); in many cases sawdust is used. It requires a practical chemist to mix nitro-glycerine with clay or sawdust, for it is a very dangerous piece of work. Revolutionists would do well to buy the dynamite ready made. It is very cheap; much cheaper than they can manufacture it for themselves. No. 1 is the best. No. 2 will do also. Dynamite can be purchased from any large powder concern in any of our cities.

Dynamite explodes from heat and detonation. It is self-explosive at a temperature of 180 degrees (Fahrenheit), and through sudden and violent concussion; as, for instance, produced by the fulminate of silver or mercury. If you keep your stock of dynamite below a temperature of 100 degrees, and even 125, it will not explode itself. Yet you ought not to expose it directly to the rays of the sun or get it too near the stove. The best way of storing it is: Wrap it well in oil paper, place it in a box of saw-dust, and bury it in your cellar, garden or where nobody can touch it. The moisture is neutralized by the saw-dust. Never attempt to thaw frozen dynamite. This requires the skillful hand of a chemist, and is very dangerous.

In handling dynamite be careful not to get any of it on your

lips, nose, eyes, or skin anywhere; for if you do it will give you a terrible headache. When filling bombs, and you must handle it with you fingers, place a rubber mitten on your hand, and tie a handkerchief over mouth and nose, so that you may not inhale the dangerous gases. They likewise produce a frightful headache. In filling bombs use a little wooden stick, and never be careless.

Keep the stuff pure! Beware of sand. For the revolutionist it is necessary that the revolutionist should experiment for himself; especially should he practice the knack of throwing bombs.

For further information, address A. S., *Alarm*, 107 5th Ave., Chicago.

July 25, 1885. Street Fighting. How to Meet the Enemy. Some Valuable Hints for the Revolutionary Soldiers. What an Officer of the United States Army Has to Say.

August 17, 1885. The armed section of the American Group meets Monday night at 54 West Lake Street.

September 5, 1885. Now, in regard to the proposed strike next spring, a few practical words to our comrades. The number of organized wage-workers in this country may be about 800,000; the number of the unemployed about 2,000,000. Will the manufacturing kings grant the modest request under such circumstances? No, sir. The small ones cannot, and the big ones will not. They will then draw from the army of unemployed. The strikers will attempt to stop them. Then comes the police and the militia. . . . Say, workmen, are you prepared to meet the latter; are you armed?

March 20, 1886. Argument is no good unless based on force. You must be able to make your antagonist stand still and listen to your plea. When he refuses to do that, the use of force becomes a necessity.

April 3, 1886. American Group, etc. Mr. Parsons thought the organization of the vast body of unskilled and unorganized laboring men and women a necessity, in order that they formulate their demands and make an effective defense of their right. He thought the attempt to inaugurate the eight-hour system would break down the capitalistic system, and bring about such disorder and hardship that the social revolution would become a necessity. As all roads in ancient times led to Rome, so now all labor movements of whatever character inevitably lead to socialism. The unskilled laborers' eight-hour league was then organized, thirty joining.

April 24, 1886. Workingmen, to arms. War to the palace, peace to the cottage, and death to luxurious idleness. The wage system is the only cause of the world's misery.

One pound of dynamite is better than a bushel of bullets. Make your demand for eight hours with weapons in your hands to meet the capitalistic bloodhounds—police and militia—in proper manner.

April 24, 1886. Knaves or Fools. In the contest now going on between labor and capital the pretended leaders and official mouth-pieces of trades-unions and Knights of Labor assemblies are attempting to prevent the toiling masses from using the best, most

effective, and only successful means against the predatory beasts which must be exterminated as public enemies during strikes and boycotts, our only weapons against capitalistic conspiracy and organized murder, starvation, and wage-slavery. These flunkies and lickspittles speculate on their chances of securing places at the public crib as influential agitators, or as foremen and "sweaters" over their fellow-workers, or some other sinecure; others are tickled by the praises of the capitalistic press, and by being quoted as representative reformers in interviews, etc. These enemies of labor manage to get themselves elected to trades assemblies and other representative bodies of organized labor, where they play the role of harmonizers and peacemakers between the despoiled wage-slaves and their despoilers. The toiling masses never gave Mr. Powderly or any other man the authority to issue a proclamation against the enforcement of the eight-hour law from and after May 1st, nor has he been employed by any plebiscite to forbid strikes and boycotts, and to preach the harmony of capital and labor as against the gospel of discontent. The Knights of Labor, trade-unionists, and other working people repudiate by their action the foolish talk of such men. The social war has come, and whoever is not with us is against us.

Motto: All government we hate. Organ of the autonomous group of the I. A. A. Volume I. Chicago, January 1, 1886. No. 1. Complaints should be sent to G. Engel, 286 Milwaukee Avenue. Call. Workingmen and fellows: We recognize it our duty to contend against existing rule, but he who would war successfully must equip himself with all implements adapted to destroy his opponents and secure victory. In consideration thereof we have resolved to publish the Anarchist, as a line in the fight for the disinherited. It is necessary to disseminate anarchist doctrine. As we strive for freedom from government we advocate the principle of autonomy, in this sense: We strive towards the overthrow of the existing order, that an end may be put to the "abhorrent work of destruction on the part of mankind, and fratricide may be done away." The equality of all, without distinction of race, color, or nationality, is our fundamental principle, thus ending rule and servitude. We reject reformatory endeavors as useless play, adding to the miserable derision and oppression of the workingmen. Against the never-to-be-satisfied ferocity of capital, we recommend the radical means of the present age. All endeavors of the working classes not aiming at the overthrow of existing conditions or ownership, and at complete self-government, are to us reactionary, etc.

#### ADDRESSES AND SPEECHES MADE BY PRISONERS.

*Mr. Grinnell* now introduced and read extracts from addresses and speeches proved to have been made by Fielden, Parsons, Engel, Spies, and Schwab to the workingmen.

At a gathering of workmen at Mueller's Hall, in June, 1885, Schwab said, in German, that the gap between the rich and poor was growing wider; that, although despotism in Russia had endeavored to suppress Nihilism, Nihilism was still growing; that the death of Reinsdorf, a man then recently executed in Europe, had been avenged by the killing of the chief of police of Frankfort, who had been industrious in endeavoring to crush out socialism; that murder was forced on many a man through the misery brought on him by capital; that freedom in Illinois was unknown; that what was needed here was a bloody revolution which would right their wrongs. The *Arbeiter Zeitung*, in reporting this speech, quotes the concluding remark of Schwab as follows: "Because we know that the ruling class will never make any concessions, therefore we have, once for all, severed our connection with it, and made all preparations for a revolution by force."

On February 15, 1886, Schwab made a speech at the Twelfth Street Turner Hall, in regard to the London riots, which closed as follows: "We greet the London events as the announcement of the near approach of the social revolution."

At a mass meeting on the lake front, on April 26, 1886, about a week before the Haymarket meeting, Schwab said: "Today is Easter Day. . . . The workmen of Chicago today celebrate their resurrection. They are resurrected from their laziness, from their indifference in which they have remained so long. . . . From the 1st of May we will work eight hours a day. The workmen want this, and wanting it is having it, if the desire is based on power. The workmen are powerful if they are united. . . . Therefore also in future let us be a united, solid army. Unite with your unions, never desert them. . . . Everywhere police and murderers are employed to grind down workmen. For every workman who has died through the pistol of a deputy sheriff, let ten of those executioners fall. Arm yourselves. After the 1st of May eight hours, and not a minute more."

Spies, in a speech at the Mueller Hall meeting in June, 1885, advised the workmen to revolt at once, and said that he had been accused of giving this advice before, and that it was true, and that he was proud of it; that wage-slavery could only be abolished through powder and ball. He says that he was accused by a little paper to have called upon the workmen to commit criminal acts. He conceded that, and repeated it again. What is crime, anyway? When the workman was putting himself in the possession of the fruits of his labor stolen from him, that was called a crime. A pseudo opponent had remarked that he could bring about the emancipation of the working classes through the ballot. This, however, was impossible. If the ballot had been of advantage to the workmen, then Napoleon and Bismarck never would have given the franchise to the people; the ballot was serving only for the covering over of capitalistic tyranny and highway robbery. The speaker pointed out the miserable condition the coal-diggers in the Hocking

Valley had gotten into, and in conclusion he gave his hearers the advice to frequently visit the meetings of the International Workingmen's Association, and to read the organs of the workingmen for the purpose of informing themselves.

At a meeting at Twelfth Street Turner Hall on October 11, 1885, Spies was introduced, and offered the following resolutions:

Whereas, a general move has been started among the organized wage-workers of this country for the establishment of an eight-hour workday, to begin May 1, 1886; And whereas, it is to be expected that the class of professional idlers, the governing class who prey upon the bones and marrow of the useful members of society, will resist this attempt by calling to their assistance the Pinkertons, the police, and State militia; therefore, be it Resolved, that we urge upon all wage-workers the necessity of procuring arms before the inauguration of the eight-hour strike, in order to be in a position of meeting our foe with his own argument,—force. Resolved, that while we are sceptical in regard to the benefits that will accrue to the wage-workers in the introduction of an eight-hours workday, we nevertheless pledge ourselves to aid and assist our brethren in this vast struggle with all that lies in our power, as long as they show an open and defiant front to our common enemy, the labor-devouring classes of aristocratic vagabonds, the brutal murderers of our comrades in St. Louis, Lamont, Chicago, Philadelphia, and other places. Our war-cry may be, "death to the enemy of the human race—our despoilers."

August Spies supposed that Mr. ——— did not like the terms in which members of the government were referred to. The reason of this was that Mr. ——— was one of those political vagabonds himself. There were 9,000,000 of people engaged in industrial trades in this country. There were but 1,000,000 of them as yet organized, while there were 2,000,000 of them unemployed. To make a movement in which they were engaged a successful one, it must be a revolutionary one. Don't let us, forget the most forcible argument of all—the gun and dynamite.

At a meeting on the Lake Front in July, 1885, Parsons made a speech. He was speaking in a general way about trouble with the workingmen and the people,—what he called the proletariat class,—and spoke about their enemies, as he termed them,—the police and the constituted authorities; he said that they were their enemies, and that they would use force against them; the authorities would use the police and the militia, and they would have to use force against them; he advised them to purchase rifles; if they hadn't money enough to buy rifles, to buy pistols, and if they couldn't buy pistols, they could buy sufficient dynamite for twenty-five cents to blow up a building the size of the Pullman building, and pointed to it.

At another meeting in the same month at the same place, after the picnic, Parsons spoke about a young German experimenting with dynamite at this picnic. He had dynamite in a can, a tomato

can, and spoke of how the thing was thrown into a pond, or lake, and how much execution could be done with that amount of dynamite. He also spoke of what could be done with it in destroying buildings and property in the city.

At a meeting in Market Square in April, 1885, Parsons made a speech to a company of workingmen, in which he said: "It is no use of arguing; we will never gain anything by argument and words. The only way to convince these capitalists and robbers is to use the gun and dynamite."

At a meeting at Baum's Pavilion, on February 22, 1885, Parsons said, in a speech: "I want you all to unite together and throw off the yoke; we need no president, no congressmen, no police, no militia, and no judges; they are all leeches, sucking the blood of the poor, who have to support them all by their labor. I say to you, rise, one and all, and let us exterminate them all. Woe to the police or the militia whom they send against us."

At a meeting in April, 1885, of workingmen for the purpose of denouncing the new Board of Trade, Parsons spoke as follows: "The present social system makes private property of the means of labor and the resources of life—capital—and thereby creates classes and inequalities, conferring upon the holders of property the power to live upon the labor product of the propertyless. Whoever owns our bread owns our ballots; for a man who must sell his labor or starve must sell his vote when the same alternative is presented. The inequalities of our social system, its classes, its privileges, its enforced property and misery, arise out of the institution of private property, and so long as this system prevails our wives and children will be driven to toil, while their fathers and brothers are thrown into enforced idleness, and the men of the Board of Trade, and all other profitmongers and legalized gamblers who live by fleecing the people, will continue to accumulate millions at the expense of their helpless victims. This grand conspiracy against our liberty and lives is maintained and upheld by statute law and the Constitution, and enforced by the military arms of the State. If we would achieve our liberation from economic bondage and acquire our natural right to life and liberty, every man must lay by a part of his wages, buy a Colt's navy revolver (cheers, and 'that's what we want'), a Winchester rifle (a voice: 'and ten pounds of dynamite; we will make it ourselves'), and learn how to make and to use dynamite. (Cheers.) Then raise the flag of rebellion (cries of 'bravo' and cheers), the scarlet banner of liberty, fraternity, equality, and strike down to the earth every tyrant that lives upon this globe. (Cheers, and cries of 'Vive la Commune.') Tyrants have no right which we should respect. Until this is done you will continue to be robbed, to be plundered, to be at the mercy of the privileged few; therefore agitate for the purpose of organization, organize for the purpose of rebellion, for wage-slaves have nothing to lose but their chains; they have a world of freedom and happiness to win."

At a meeting in Greif's Hall in August, 1885, referring to the late street-car strike, Parsons made a speech in which he said: "If but one shot had been fired, and Bonfield had happened to be shot, the whole city would have been deluged in blood, and the social revolution would have been inaugurated."

At a meeting at Grief's Hall on March 29, 1885, Fielden said that a few explosions in the city of Chicago would help the case considerably. "There is the new Board of Trade, a roost of thieves and robbers. We ought to commence by blowing that up."

At another meeting at the same place Fielden said: "It is a blessing that something has been discovered wherewith the workingmen can fight the police and the militia with the Gatling guns."

At a meeting at Ogden's Grove, June 7, 1885, Fielden said: "I want all to organize; every workingman in Chicago ought to belong to our organization; it is of no use to go and beg of our masters to give us more wages or better times. When I say organize, I mean for you to use force; it is of no use for the working people to hope to gain anything by means of the ordinary weapons; every one of you must learn the use of dynamite, for that is the power with which we hope to gain our rights."

In the fall of 1885 Fielden addressed a crowd on the lake front, in which he stated that the workingmen—the laborers—were justified in using force to obtain that which was theirs, and which was withheld from them by the rich; that our present social system was not proper; that an equality of possession should exist, and if the rich kept on withholding from the poor what was justly due to the poor because they had earned it, they should use force and violence; that force should be used against the rich, the wealthy, and the men who had means; that the existing order of society should be destroyed—annihilated; and as no other redress could be had peaceably, they were justified in using force and violence.

At a meeting of the American Group on the 2d of September, 1885, Fielden, in a speech, said: "It is useless for you to suppose that you can ever obtain anything in any other way than by force. You must arm yourselves and prepare for the coming revolution."

At a meeting held in the Twelfth Street Turner Hall, October 11, 1885, Fielden said: "The eight-hour law will be of no benefit to the workingman; you must all organize and use force; you must crush out the present government, as by force is the only way in which you better your present condition."

On the 20th of December, at the same place, Fielden said: "All the crowned heads of Europe are trembling at the very name of socialism, and I hope soon to see a few Liskas (the man who murdered the chief of police of Frankfort, and was hanged for it) in the United States to put out of the way a few of the tools of capital."

At a meeting at 106 Randolph street on January 14, 1886, Fielden said: "It is quite true that we have lots of explosives and dynamite in our possession, and we will not hesitate to use it when the proper

time comes. We care nothing either for the military or police, for these are in the pay of the capitalist."

On March 12, 1886, Fielden, at Zepf's Hall, said: "We are told that we must attain our ends and aims by obeying law and order. Damn law and order! We have obeyed law and order long enough. The time has come for you, men, to strangle the law, or the law will strangle you."

At a meeting at the Twelfth Street Turner Hall, Fielden said: "The 1st of May will be our time to strike the blow, there are so many strikes, and there will be 50,000 men out of work—that is to say, if the eight-hour law is a failure—if the eight-hour movement is a failure."

In February, 1886, Engel, at Timmerhoff's Hall, said: "Every man wants to join them—to save up three or four dollars to buy revolvers to shoot every policeman down; he says he wants every workingman who he could get to join them, and then advise everybody you know—you save up three or four dollars to buy a revolver that was good enough for shooting policemen down, he said." Engel spoke in German.

In January, 1886, Engel made a speech at Neff's Hall, 58 Clybourn avenue, before the assembly of workmen of the North Side, in which he said that those who could not arm themselves, and who could not buy revolvers, should buy dynamite, that it was very cheap and easily handled; and gave a general description of how bombs could be made, how gas pipes could be filled; that a gas pipe was to be taken and a wooden block put into the end, and it was to be filled with dynamite; then the other end is also closed up with a wooden block, and old nails are tied around the pipe by means of wire; then a hole is bored into one end of it, and a fuse with a cap is put into that hole; that the nails should be tightened to the pipe so that when it explodes there will be many pieces flying around; that gas pipe could be found on the west side from the river, near the bridge.

Engel made a speech to the North Side Group in Neff's Hall last winter, in which he said that every one should manufacture bombs for himself; that pipes could be found everywhere without any cost; that the pipes were to be closed up with wooden blocks fore and aft, and that in one of the blocks was to be drilled a hole for the fuse and cap; that every workingman should arm himself with them; that they were cheap to be had and were the best means against the police and capitalist.

At Neff's Hall Engel addressed the meeting for money for a new paper which they had started. It is called the *Anarchist*. He said that the *Arbeiter-Zeitung* was not outspoken enough in those anarchistic principles; therefore it was necessary to start something else, and for this purpose they started this paper; they distributed some of these papers around there; and after that he sat down. Later on he spoke again, and he gave a kind of history of revolutions in the old country, and stated that the nobility of France were only forced to give up their privileges by brute force; and then he stated



that the slaveholders in the South had only liberated their slaves after being compelled by force by the northern States, and therefore, he said, that the present wage slavery would only be done away with by force also; and he advised them to arm themselves, and if guns were too dear for them they should use cheaper means—dynamite, or anything they could get hold of to fight the enemy. He stated that in order to make bombs it was not necessary that they should be round, anything that was hollow inside—in the shape of gas pipes, or something like that.

#### Most's Book.

The following substantial abstract of the contents of Herr Most's Book was introduced in evidence:

**Science of Revolutionary War.**—Manual for Instruction in the Use and Preparation of Nitro-Glycerine, Dynamite, Gun-Cotton, Fulminating Mercury, Bombs, Fuses, Poisons, etc., etc. By Johann Most, New York. Printed and published by the International Zeitung Verein (International News Co.), 167 William street.

The substance of this treatise is as follows:

About the importance of modern explosives for the social revolution, present and future, nothing need be said. They will form a decisive element in the next epoch of the world's history. It is therefore natural that the revolutionists of all countries should be anxious to obtain these explosives and learn to apply them practically. Too much time has been wasted, books are expensive, etc. Even explanations of learned treatises are unavailing. Persons attempting to experiment according to the instructions met with results not encouraging. The matter was expensive, dangerous, etc.

Some, under experiment, have produced tolerable gun-cotton, and small quantities of nitro-glycerine converted into dynamite. But this was of small value, as with small quantities of dynamite little can be done, and its expensive. For manufacture of dynamite on a large scale, an expensive outfit is required and separate quarters. A private dwelling cannot be used. Such a laboratory must be kept in a secluded spot, because of the stench which would lead to discovery and ejection. We have not, however, abandoned experiments, but concluded that dynamite cannot be successfully supplied by private manufacture, but must be obtained from professional manufacturers. Not an ounce of dynamite heretofore used has been manufactured by revolutionists, but obtained by them. Watchmen cannot prevent the securing of a supply. Beside, it is now an article of commerce for many purposes, so that its obtainment cannot be prevented. The purchase is easier and cheaper than private manufacture, and for this money is required. Dynamite factories may be confiscated. The purpose of this treatise is to publish the simplest methods for the manufacture of explosives, and to explain their use and effect. In this direction many mistakes have been made, attributable to ignor-

ance. Dynamite may be exploded by a spark of fire, but it is not so usually, for when brought in contact with the flame it usually burns without causing further effects. It is exploded by shock, and therefore must be handled carefully. Explodes easier when frozen than not, and freezes a few degrees above zero (Reaumur). It will stand a high degree of heat without exploding. Moisture has no effect upon it, as the principal ingredient—nitro-glycerine—is greasy. The simplest and surest way to explode dynamite is in the application of blasting cartridges, obtainable in all large houses dealing in blasting or shooting utensils (descriptions of the cartridge given). In important undertakings, procure best quality of fuse, which looks like common twine, which should be guarded against moisture by being soaked in tallow or tar, or encased in rubber. When explosion is desired from a distance, a wire and electric battery is preferable, but if only a few minutes are desired to get away, six or eight inches of fuse will answer, attached to a piece of touchwood. For a bomb, only so much fuse required as can burn in the interval of throwing—six or eight inches is enough, determinable by experiment. To explode dynamite by fuse and percussion cartridge, the bomb or other vessel should be enclosed on all sides, with an opening through which the blasting cartridge may be introduced. The cartridge should reach into the explosive material two-thirds of its length, but not let the fuse touch, for the fuse might set fire to the dynamite, and it might escape in flame through the orifice. When the fuse burns to the cartridge it explodes the latter, and that the dynamite. The fulminating cap should be tightly squeezed into the petard, to avoid dislocation. Before introducing the fuse into the cap, cut it off to make a fresh end. In important undertakings the greatest care is advisable. The fulminating mercury rests loosely and may fall out of the cartridge, which should therefore be examined before being used. The same rule obtains as to nitro-glycerine but the latter is a more powerful explosive than dynamite, the latter consisting of 75 to 80 per cent of nitro-glycerine, and 20 to 25 per cent of charcoal, sawdust, or other proper material. On account of its rapidity, the greatest force of a dynamite explosion is in the direction where it meets greatest resistance. No very heavy or very strong cylinder should be used to demolish a wall, but a simple tin can is preferable. But where dynamite is proposed to be exploded among a number of persons, the stronger the shell, "the more splendid are the results."

The best shape for a bomb is globular, as furnishing equal resistance and producing the same explosive effect in all directions. Iron shells are the best; obtainable in a foundry. Zinc globes are not to be despised, and can be privately manufactured; but the latter requires obtaining a brass mould from a trustworthy expert. With such a mould, fifty semi-globes of moderate size can be manufactured in a day, and these can be soldered together. Every bomb must have an opening—about three-quarters of an inch—through which to fill, provided with a screw top to be put in after the filling

is done, with a hole bored through the top, large enough to pass a detonating cap which is connected with the fuse. After the bomb is filled with dynamite, it is screwed together, and then the fuse can be lighted and the bomb thrown. "A trial of such a bomb has had a most excellent result."

A zinc globe four inches in diameter, filled with dynamite, was experimented with. The explosion was like a cannon-shot, bursting a large flagstone into twenty pieces, scattering them ten to fifteen feet, making a hole two feet in the ground, and at thirty to forty feet distance pieces of the shell were found about the size of a revolver ball and very ragged. If this bomb had been placed under the table of a gluttonous dinner party, or if it had been thrown through a window on to the table, what a beautiful effect it would have had.

Another method: a piece of gas or water pipe a few inches long; cut a screw on each end and cover with a screw cap, and, for explosion, proceed as with the other bomb. Such missiles are easily manufactured, cheap, and against a crowd must produce brilliant effects. No certainty of one bomb being successful—may result only in broken windows, etc. Any ordinary house will resist such explosions, and in operating against houses a different method must be pursued. Percussion primer bombs can be provided by making pyramid or other shaped shells with a percussion cap on each side, so that when thrown, whichever side strikes will explode the cap; but these, if falling in soft ground, are ineffective. The cap must be secured tightly, so as not to fall off, and the detonating chamber closed at its bottom with fulminating mercury and the space being filled with fine gunpowder; a second explosive cap being placed at the bottom of the vent in the dynamite, which is to be used preferably. A bomb filled with fulminating mercury would have to have a very strong shell to be effective, and filling a bomb with fulminating mercury is dangerous, and the fulminate is more expensive than dynamite. Besides all which the primer bombs described are more expensive and difficult of construction than a globular bomb. We are of opinion that the fuse construction (with detonating chamber) is more practical and reliable. The best construction for a bomb that will explode by concussion is one in which is inserted a small glass tube, slightly bent, closed at each end by melting, and then inserted in a shell so that the ends of the tube meet the opposite sides of the chamber; around this inner tube is placed another tube full of a mixture of chlorate of potash and sugar; and around this combined tube the chamber is filled with dynamite and the shell closed. When this bomb is thrown, the concussion breaks the glass tube, the sulphuric acid ignites the potash mixture, and the result is an explosion of the dynamite. In practical use, the power of dynamite is illustrated in mining blasts, etc., small quantities producing wonderful results, which are dependent upon the confinement of the dynamite. In attacking buildings, unless the dynamite can be introduced into chimneys or other orifices, considerable quantity must be used to shake the building or bring it

down. For ordinary buildings nothing less than ten pounds will do, and for massive buildings, barracks, churches, etc., forty or fifty pounds may be required, and even then will not be effective unless skillfully placed. The explosives should be placed under or within a foundation or close to the main wall, just above the ground, but not packed in a shell—simply in tin cylinders, the length of the cylinder being proportionate to the breadth of the breach desired. Care must be taken not to break the fuse.

Waterproof fuse may be had ready made. Following are results of experiments by the war department of Austria: Four pounds of dynamite in a tin box made a hole two feet by eighteen inches in a one-foot brick wall; seven pounds made a hole thirteen by fifteen inches in a two-foot brick wall; twenty-seven pounds made a hole fifteen feet square in a three-foot brick wall; forty-three pounds knocked down a brick wall three and a half feet thick. Good results were obtained by loading down the dynamite with sandbags of earth—two pounds at the bottom of a wall sunk in the earth and covered with a foot and a half of ground, shaking down seven feet of a wall eighteen inches thick; fourteen pounds of dynamite in two tin cylinders, each two feet long and three inches in diameter, made a breach in a wall six and a half feet wide and seven feet high. In a foundation of a four-foot brick wall, three holes were dug eight feet apart and seven and a half feet deep, and six pounds of dynamite in a tin box placed in each hole and exploded simultaneously by electricity. The result was the demolition of the wall for a distance of twenty-five feet. As compared with dynamite, sixty pounds of gunpowder in tin boxes, exploded against a stone wall, produced no other effect than to blacken it, the damage to the wall being eight to ten times less, even when confined, than in the case of dynamite. In case of war the destruction of bridges, etc., is important, and here dynamite has been especially effective. As examples: Two pounds of dynamite in a tin box, exploded on a wrought-iron plate, two inches thick, tore a hole through the plate. Twenty-six pounds of dynamite in eight tin boxes, laid one on another, destroyed an iron single track railroad bridge, pipe construction, securely built. Seven pounds of dynamite exploded near a railroad track, threw off one rail and splintered the second, destroying the nearest tie. A train following immediately, perhaps imperial special, might have "gone to the devil." (Other experiments also mentioned.)

To thaw dynamite, which freezes very easily, the best plan is to put the dynamite in a waterproof vessel into a larger one containing water. Frozen dynamite is dangerous when ignited, and may fail to explode if special pains are not taken. Failures should be avoided in revolutionary movements. It is cheapest to buy explosives or confiscate them, but instruction given for manufacture, avoiding technical terms, advises processes which we have tried successfully, the principles of operation resting on the method discovered by Ditmar, the New York dynamite manufacturer, but simpler.

To manufacture dynamite, there are mixed, first, two parts sulphuric acid with one of nitric acid; second, there is added one eighth of the whole quantity of glycerine. Scientists have overstated the dangers of this manufacture, with the result that, on the part of revolutionists, less nitro-glycerine has been manufactured than would otherwise have been. Sulphuric acid of at least forty-five degrees can be had of any wholesale druggist in nine-pound bottles; nitric acid of at least sixty-six degrees in seven-pound bottles. To eighteen pounds of sulphuric acid you need nine pounds of nitric acid and three and a half pounds of glycerine. Mixing can be done in an iron pot, enameled, or in any porcelain or glazed vessel. In an outer vessel pour water till it reaches three fourths of the height of the inner vessel, kept cold by the use of ice. Put the sulphuric acid into the inner vessel; add half the quantity of nitric acid, stirring with a glass rod and pouring in slowly. To get rid of the offensive and unhealthy fumes, cover the mouth and the nose by a handkerchief; keep the windows open and mix near or under an open flue. When the mixture is completed, cover with a piece of glass and leave for fifteen to twenty minutes to cool off, the mixture causing a high degree of heat; then add the glycerine, stirring briskly with the glass rod while pouring. If yellowish red fumes arise, indicating conflagration, stop pouring the glycerine and stir more briskly, and afterwards resume the addition of the glycerine. After completing the mixture, stir for ten minutes or so; then lift out the inner vessel containing the mixture, and pour it into the water in the outer vessel slowly. A yellowish oil will settle to the bottom, which is nitro-glycerine. After some time pour off the water. Then pour the nitro-glycerine for further purification into a bowl filled with good soda lye, stirring briskly, so as to cause all of the nitro-glycerine to come in contact with the lye; let settle and pour off the lye, when the nitro-glycerine can be bottled. Nitro-glycerine in a natural state being dangerous from concussion, it is desirable to manufacture the dynamite at once. To do this, take sawdust or pulverized charcoal; or a mixture equal parts powder, sugar, dust of saltpetre, and wood pulp; put this material into a vessel and pour on the nitro-glycerine, kneading it with a wooden ladle to the consistency of a thick dough; pack in oil paper or tin boxes. Long-continued handling of dynamite with the bare hands produces severe headache.

Gun-cotton is also an explosive, not much inferior to dynamite. To prepare it take unglued cotton wadding, boil in soda lye, dry carefully, either in the air or upon hot iron plates or bricks. The cotton is then dipped in the mixture of acids (sulphuric and nitric), and, after being left until thoroughly saturated, is taken out, squeezed dry, but not with the hands, and is then put in a vessel with soda lye; after fifteen minutes, again taken and squeezed out,—which may be done with the hand, and which is repeated two or three times, but each time in new warm water. Then the wadding must be dried by atmosphere, not by hot material. It

is not extensively used, because it ignites in warm sunshine. Use immediately after manufacture, or keep in water until required, and then dry and use. Unconfined gun-cotton burns without explosion, but is explosive when placed in cylindrical bombs and rammed in securely. It can be exploded by fire without concussion. It is not to be despised, because it is more easily manufactured than dynamite and has an innocent appearance.

Gun-cotton saturated with nitro-glycerine results in nitro-gelatine, incredibly explosive, and far superior to dynamite, but its keeping on hand is dangerous, and the mixture should therefore immediately precede its contemplated use.

Near Washington the following experiment was recently made: By a dynamite gun, bombs were thrown containing eleven pounds nitro-gelatine two thousand feet against solid rock. One bomb tore a hole six feet deep and twenty-five feet in diameter in the rock, and ten tons of rock were cut loose and thrown in all directions, while stones from ten to twelve pounds were carried about half a mile. The spectators, nearly all military men from foreign countries, concurred that an ordinary vessel would be destroyed by the explosion of a single such bomb, while an iron-clad receiving it in the side would thereby be disabled. Revolutionists cannot manufacture dynamite cannon (which are about forty feet long), but they can make bombs and use ordinary slings. "That which reduces what had been solid rocks into splinters may not have a bad effect in a court or monopolist's ballroom."

Fulminate of mercury is a powerful explosive, consisting of mercury, sulphuric acid, and alcohol, equal weights, which must be mixed in a clean glazed vessel, in cold water or ice, the mercury being first put into the vessel, and the rest stirred in slowly, the acid being added first, and enough of it to secure the entire solution of the mercury; pour in the alcohol after cooling. The product—a gray substance—is then spread on tissue paper to dry, and a little potash is added to reduce the danger of explosion. It explodes at a temperature of 150 degrees. Silver may be substituted for mercury, giving a better product, but more expensive. Experimenting should be done with very small quantities to begin with. Fulminate of mercury explodes under a spark, as, for instance, a gun cap; and bombs charged with this explosive explode by concussion simply. In filling a bomb great care must be taken, as no ramming or concussion is allowed, and the filling is therefore better done while the mixture is moist and when it will settle into shape; but in this event the shell must be left open until completely dry. In closing the shell care must be taken not to cause any spark or ignition, which would be followed by an explosion. In modern wars they do not confine themselves to explosives and weapons of any particular description, but are aimed to weaken the enemy by all means possible.

A particularly effective weapon is fire. For example, in Moscow, against Napoleon, and by the Prussians in France in 1870-71.

Therefore, in a list of revolutionary war utensils, the article serviceable for incendiary purposes must not be omitted. A very effective mixture is of phosphorous and bisulphide of carbon. Buy yellow phosphor, which is always kept under water, and must never be touched with the bare hands, but taken from the containing bottle with a fork or stick; put in a porcelain bowl full of water, and cut into portions about the size of a bean, under water. The phosphor must be kept in a bottle with a glass stopper fitting airtight. Fill a bottle with bisulphide of carbon, drop in the phosphor quickly, and close; then shake slowly until dissolved. The fluid is then ready for use, and if poured on rags will result in spontaneous combustion, after a time. Petroleum added retards the combustible action, and may be used when one desires to make good his escape. Experiments with this mixture were made in France by detectives.

Another incendiary article is thus constructed: Take a tin fruit-jar, remove the cover; cut a hole in the centre of the cover, into which insert a medicine glass; then resolder the cover; pour in benzine; fill the medicine glass with gunpowder, and close with a stopper, passing a fuse through the stopper; light the fuse; the result is, after a time, the explosion of the powder, bursting the can and scattering the benzine blazing in every direction. A hundred men equipped with such implements, scattered through a city, could achieve more than twenty batteries of artillery, and the thing is easily made, and cheap.

There may be cases in which the revolutionist must abandon shelter and sacrifice his own life in the warfare against the property-owning beast of society; but no revolutionist should unnecessarily endanger his own life. An unknown danger is the more terrible. Therefore revolutionists should act singly or in as small numbers as possible.

Owing to the failure of various attacks, the idea has been suggested to poison weapons used for assault. But this idea has never been carried out, owing to the expense and difficulty of procuring suitable poisons. The best substance for poisoning arms is curare, used by the South American Indians on their arrows. It is absolutely fatal, but is high priced. A dagger red hot and hardened in a decoction of rose laurel is fatal. Pulverized phosphor mixed with gum arabic, and applied to the weapon, is also fatal. So with verdigris. So as to cadaver poison and prussic acid; but poisons must always be prepared immediately before use, as they dissolve in the atmosphere and become innocuous.

The successful arming of the people cannot be achieved by one definite procedure, but by utilizing all different circumstances. The best thing would be for organized workingmen throughout the civilized world to provide themselves with muskets and ammunition, and to thoroughly drill; but this is almost impossible, as the authorities would interfere with them; and throughout Europe even the purchase of weapons by the common people is made difficult, while

secret purchase subjects to the charge of "constructive treason." In America every one has the constitutional right to arm; but the carrying of concealed weapons is prohibited, while, if carried openly, that also would soon be prohibited. That is not all. Hardly had a military organization been effected in Illinois, when the Legislature passed a law allowing to march and drill only the State organizations. A litigation has resulted which is as yet undetermined. There is evidenced also, among legislators, a disposition to prohibit dynamite except for industrial purposes and national defense. The workmen of America cannot arm themselves unless they do it soon. If they arm themselves at once, well; if not, it will soon be difficult or impossible, and "you will find yourselves defenseless and powerless in the face of a mob of murderers in uniform, armed to the teeth." The price of a watch would buy a fine breechloader. We do not take much stock in the arming of organizations, for several reasons; among others, that it will cause a great pressure upon those who are unwilling to join, which is in violation of the anarchistic principle, and dangerous to the existence of the organization. Besides which, it would involve great financial sacrifice to those who prefer to do nothing for the cause. Labor organizations should therefore content themselves with allowing arming by those who desire to do so. They may buy arms at wholesale, and retail to those who wish to purchase on the installment plan, if necessary, at cost; thus saving expense without trenching upon the assets of the society. Muskets are not the only desirable weapons; good revolvers, daggers, poisons, and firebrands are destined to be of immense service during a revolution. The modern explosives deserve attention first of all. Quantities of nitro-glycerine and dynamite, numerous hand grenades and blasting cartridges, should be at the disposal of the revolutionists — these things acting as the proletariat's substitute for artillery. These are particularly recommended to European revolutionists, as they cannot buy rifles. "Taken all in all, our motto is: Proletarians of all countries, arm yourselves; arm yourselves, no matter what may happen; the hour of battle draws near."

Certain precautions should be adopted by the revolutionist if he wishes to address an associate in writing. He should use a fictitious address, which should be frequently changed, and its contents ought to be shaped with a view to the possibility of its falling into the wrong hand. He should never mention the true name of his confederates. Initials or nicknames are preferable. There should never be a communication, even to a comrade, of a fact which it is not necessary for him to know. Your right name should never be signed. The use of a cipher is not desirable, because it is a suspicious method, and is very liable to detection. If used at all, the key to the cipher should be communicated only to one confederate. "All letters received which bear secrets should always be burned immediately after reading." Revolutionists should never retain things which would lead to detection, and should al-



ways be on guard against detectives and police. Neither through friendship, love, or family ties should you talk unnecessarily. These rules apply particularly "to all enterprises that are directed against the prevailing disorder and its laws." If a revolutionary deed is proposed, it should not be talked about, but silently pursued. If assistance is indispensable, it may be chosen; but a misstep in this is fatal. The society of suspected persons should be carefully avoided; thus spies would be rendered harmless. Self-composure in arrest is essential. Only when the arrest can be successfully resisted should there be resort to it, or when it becomes a question of life and death. But if you are sure that the arrest is on suspicion, you protest energetically and submit quietly. To examinations by a judge, the revolutionist should submit only so far as he can prove an *alibi*; admit nothing except what is proven. If all means of deliverance are exhausted, then the prisoner should defend his deed from the standpoint of the revolutionist and anarchist, and convert the defendant's seat into a speaker's stand. Shield your person as long as possible, but when you are irredeemably lost, use your respite for the propagation of your principles. We thus speak because we observe that even expert revolutionists violate its plainest rules.

*Appendix.* We have received from a layman an essay presenting another means of preparing fulminate of mercury, which essay reads as follows: Use an ordinary retort; to precipitate the fumes, put the neck of the retort in water; put in five grains of mercury and fifty grains of nitric acid; after this has cooled, add sixty grains of best alcohol, in small quantities, shaking the retort well while mixing; upon the neck of the retort put an india-rubber tube, thirty or forty centimetres long, passing through a vessel filled with water; light an alcohol flame under the retort until the mixture begins to boil; the fulminate of mercury crystallizes; pour off the liquid residue; refine the fulminate in cold water several times, and then boil the water; spread on tissue paper to dry, in a high temperature; then close carefully to prevent absorbing moisture. Thus writes our correspondent.

As a substitute for a blasting cartridge, where the latter cannot be conveniently obtained, cut a piece off the closed end of a metal penholder—say an inch and a half long,—and fill this with the caps ordinarily used for toy pistols, stuffing them in; then add a fuse, and the cartridge is ready for use.

Pulverized seeds of stramonium, baked in almond or other cake, furnish an effective poison to be used against a spy, informer, minion of the law, or other scoundrel.

Invisible ink is recommended for revolutionary correspondence. To mislead spies, write an ordinary letter, and then write with the invisible ink between the lines, or on the reverse pages; or send an old book, and write on the blank pages, or write on the inside of paper wrappers. There are invisible inks which are developed by heat; but these are not recommended, as heat is always applied

to suspicious correspondences, by the detectives. The chemical is preferable. If you write with nitrate of cobalt (invisible), it becomes bluish if you spread oxalate of potash over it. Nitrate of copper made legible by spreading cyanide of potassium on; and so if written with hydrochlorate. There are still other methods, but enough has been suggested.

We now speak of Sprengel's acid and neutral explosives. Sprengel has found that hydro-carbons mixed with vehicles can be exploded by a cap, like dynamite. For instance, equal parts of carbo-lic acid dissolved in nitric acid gives an explosive. By the solution of carbo-lic in nitric acid, picric acid is produced; in the mixture, heating takes place, which should be cooled off. Mix the picric acid with nitric acid, and an explosive as strong as nitro-glycerine is produced, the proportions being 58.3 of picric acid to 41.7 of nitric acid. If, instead of carbo-lic acid, benzine is used, the result is nitro-benzole. Add nitric acid in the proportion of 71.92 nitric acid to 28.08 nitric benzole, and you have an explosive. The various liquids can be utilized by absorbing them into chlorate of potash moulded into suitable shapes, which can be exploded ordinarily by a percussion cap; but these preparations are not as handy as dynamite, and can be used only in glass, stone, or iron shells, other shells being affected by the acid; but they are easier to produce than nitro-glycerine.

Prussic acid may be prepared as follows: Take thirty grains yellow prussiate of potash, twenty grains sulphuric acid, and forty grains of water; heat the mixture in a retort, and catch the fumes in a well-cooled receiver. It is desirable that the receiver should be bent and furnished with water in its lower portion, through which the fumes must pass, thus aiding condensation. There must be a hollow globe to receive the accumulating prussic acid. It is very volatile, and, upon drying up, no poisonous substance remains. Avoid the escaping fumes. Proceed under a well-ventilated flue. Prussic acid is not useful for poisoning arms, but is for liquors—looks like water, and smells and tastes like bitter almonds. May be preserved in the dark for a long time.

For combustion, we add the following suggestion: Take blotting-paper, saturate it with the phosphor dissolved in carbon, as published recently in the *Freiheit*, and put it in an unclosed envelope, with pulverized chlorate of potash. Close the letter, and in about a quarter of an hour, upon opening it, an explosion and intense blaze will ensue. These letters can be carried around and dropped, and be carried safely in an airtight tin box. For large buildings, such as courts, etc., put the phosphor in a small box that can be carried in the overcoat pocket, filling the lower part with tar, and the upper part with shavings; saturate with prepared phosphor, and add potash; nail on a lid carefully; bore a few holes to let in the air; and in the course of three or four hours an explosion will follow, and a fire.

Phosphor may be used as a fuse for dynamite, keeping it from

the air until the box of dynamite is placed in the proper position; then raise the lid, letting the air to the fuse; and in due time an explosion will follow.

The Platform of the International Association of Workingmen, published in the *Arbeiter Zeitung* during February, March and April, 1886, was then read.

The Declaration of Independence declares when a long train of abuses and usurpation, pursuing invariably the same object, evinces a design to reduce them (the people) under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security. Are we not too much governed, and is it not the time to practice this thought of Jefferson? Is our government anything but a conspiracy of the privileged classes against the people? Fellow-laborers, read the following declaration which we issue in your interest, for humanity and progress. The present order of society is based upon the spoliation of the non-property by the property owners; the capitalists buy the labor of the poor for wages, at the mere cost of living, taking all the surplus of labor. By machinery constantly reducing the volume of human labor, produces constantly increasing quantities of goods, whereby the competition of labor is increasing and its price being reduced. Thus, while the poor are increasingly deprived of the opportunities of advancement, the rich grow richer through increasing robbery. Only by rare and accidental opportunities can the poor become rich; avarice increases with wealth, and capitalists compete for the spoliation of the masses. In this struggle the moderately wealthy succumb, while monopolists flourish, concentrating in their hands entire branches of industry, trade, and commerce. Industrial and commercial crises follow, which force the wretchedness of the non-property owners to the highest point. Statistics of the United States show that, after deducting raw material, interest on capital, etc., property-owners claim five eighths, and allow to the laborers but three eighths of the residue. The result of the present system is recurring over-production, while the increasing elimination of labor from the process of production brings the impoverishment of an increasing percentage on non-property owners, "who are driven into crime, vagabondage, prostitution, suicide, starvation, and manifold ruin. This system is unjust, insane, and murderous." Therefore those who suffer under it, and do not wish to be responsible for its continuance, ought to strive for its destruction by all means and with their utmost energy. "In its place is to be put the true order of society. This can be brought about only when all instruments of property—all capital produced by labor—have been transformed into common property, for thus only is the possibility of spoliation cut off. Only by the impossibility of accumu-

lating private capital can everyone be compelled to work who claims the right to live. Neither lordship nor servitude will thereafter exist. This system would result further, that no one would need to work more than a few hours a day, and yet every reasonable want of society would be satisfied." In this way, time and opportunity are also given for opening to all the people the possibility of the highest imaginable culture.

Opposed to such a system are the political organizations of the capitalists, whether monarchies or republics. States are in the hands of property-owners with no other apparent end than to maintain the disorder of the present day. The laws turn their sharp points against the laboring people, and, so far as they seem otherwise, are evaded by the ruling class. The school exists for the offspring of the rich, while the children of the poor receive scarcely an elementary education, and this directed to promote conceit, prejudice, servility, anything but intelligence. By reference to a fictitious heaven, the church seeks to make the masses forget the loss of paradise on earth, while the press takes care to confuse the public mind. These institutions aim to prevent the people from reaching intelligence, being under the sway of the capitalist class. The laborers can look for aid from no outside source, in their fight against the existing system, but must achieve deliverance through their own exertions. Hitherto no privileged class have relinquished tyranny, nor will the capitalists of today forego their privilege and authority without compulsion. This is evidenced by the brutal resistance always manifested by the middle classes against all efforts by the laboring classes for their advancement. It is therefore evident that the fight must be of a revolutionary character; that wage conflicts cannot lead to the goal. Every reform in favor of the laboring classes involves a curtailment of the privileges of the rich, to which we cannot expect their assent. "The ruling classes will not voluntarily relinquish their prerogatives, and will make no concession to us. Under all these circumstances there is only one remedy left—force." Our ancestors of 1776 have taught us that resistance to tyrants is justifiable, and have left us an immortal example. By force they freed themselves from foreign oppressors, "and through force their descendants must free themselves from domestic oppression." Therefore it is your right and duty to arm, says Jefferson. Agitation to organize, organization for the purpose of rebellion,—this is the course if the workingmen would rid themselves of their chains. And, since all governments combine in their policy of oppression, it is evident that the victory of the laboring population can be confidently expected only when the wage-workers along the whole line of capitalistic society inaugurate the decisive combats simultaneously. Hence the necessity for international affiliation, and the organization of the International Association of Workingmen.

Our platform is simple and clear:

1. Destruction of existing class domination, through inexorable revolution and international activity.
2. The building of a free society on communistic organizations or production.
3. Free exchange of equivalent products through the productive organization, without jobbing and profit-making.
4. Organization of the educational system upon non-religious and scientific and equal basis, for both sexes.
5. Equal rights for all, without distinction of sex or race.
6. The regulation of public affairs through agreements between the independent communes and confederacies.

The letter referred to as Most's letter, was offered in evidence by the State.

Dear Spies:—Are you sure that the letter from the Hocking Valley was not written by a detective? In a week I will go to Pittsburgh, and I have an inclination to go also to the Hocking Valley. For the present I send you some printed matter. There Sch. "H." also existed, but on paper. I told you this some months ago. On the other hand, I am in a condition to furnish "medicine," and the "genuine" article at that. Directions for use are perhaps not needed with these people. Moreover, they were recently published in the 'Fr.' The appliances I can also send. Now, if you consider the address of Buchtell thoroughly reliable, I will ship twenty or twenty-five pounds. But how? Is there an express line to the place, or is there another way possible? Paulus the Great seems to delight in hopping around in the swamps of the N. Y. V. Z., like a blown-up (bloated) frog. His tirades excite general detestation. He has made himself immensely ridiculous. The main thing is only that the fellow cannot smuggle any more rotten elements into the newspaper company than are already in it. In this regard the caution is important to be on the minute. The organization here is no better nor worse than formerly. Our group has about the strength of the North Side Group in Chicago; and then, besides this, we have also the Soc. Rev. 6, 1, the Austrian League, and the Bohemian League, so as to say three more groups. Finally, it is easily seen that our influence with the trade organizations is steadily growing. We insert our meetings in the Fr., and cannot notice that they are worse attended than at the time when we got through weekly \$1.50 to \$2.00 into the mouth of the N. Y. V. Z. Don't forget to put yourself into communication with Drury in reference to the English organ. He will surely work with you much and well. Such a paper is more necessary as to truth. This, indeed, is getting more miserable and confused from issue to issue, and, in general, is whistling from the last hole. Enclosed is a

flyleaf which recently appeared at Emden and is perhaps better adapted for reprint. Greeting to Schwab, Rau and to you. Yours,  
Johann Most.

The circular spoken of so often in the evidence as the "Revenge" Circular, and which was written by Spies on the afternoon of May 3, and printed in English, was in the following language:

Workingmen! To Arms! The masters sent out their bloodhounds—the police; they killed six of your brothers at McCormick's this afternoon. They killed the poor wretches because they, like you, had the courage to disobey the supreme will of your bosses. They killed them because they dared ask for the shortening of the hours of toil. They killed them to show you, "free American citizens," that you must be satisfied and contented with whatever your bosses condescend to allow you, or you will get killed.

You have for years endured the most abject humiliations; you have for years suffered unmeasurable iniquities; you have worked yourself to death; you have endured the pangs of want and hunger; your children you have sacrificed to the factory lord,—in short, you have been miserable and obedient servants all these years. Why? To satisfy the insatiable greed; to fill the coffers of your lazy, thieving masters. When you ask them now to lessen your burdens, he sends his bloodhounds out to shoot you—kill you. If you are men, if you are the sons of your grandsires, who have shed their blood to free you,—then you will rise in your might, Hercules, and destroy the hideous monster that seeks to destroy you. To arms, we will call you, to arms! Your Brothers.

He at the same time wrote in the German language, of which the following is a translation:

Revenge! Revenge! Workmen! To Arms! Men of labor! This afternoon the bloodhounds of your oppressors murdered six of your brothers at McCormick's. Why did they murder them? Because they dared to be dissatisfied with the lot which your oppressors have assigned to them. They demanded bread, and they gave them lead for an answer, mindful of the fact that thus people are most effectually silenced. You have for many, many years endured every humiliation without protest; have drudged from early in the morning till late at night; have suffered all sorts of privations; have even sacrificed your children. You have done everything to fill the coffers of your masters—everything for them; and now, when you approach them and implore them to make your burden a little lighter, as a reward for your sacrifices, they send their bloodhounds—the police—at you, in order to cure you, with bullets, of your dissatisfaction. Slaves, we ask and conjure you,

by all that is sacred and dear to you, avenge the atrocious murder which has been committed upon your brothers today, and which will likely be committed upon you tomorrow. Laboring men, Hercules, you have arrived at the crossway. Which way will you decide?—for slavery and hunger, or for freedom and bread. If you decide for the latter, then do not delay a moment; then, people, to arms! Annihilation to the beasts in human form who call themselves rulers! Uncompromising annihilation to them! This must be your motto. Think of the heroes whose blood has fertilized the road to progress, liberty, and humanity, and strive to become worthy of them. Your Brothers.

Twenty-five hundred copies were printed and distributed in various parts of the city.

### THE OPENING SPEECH FOR THE PRISONERS.

*July 31.*

*Mr. Salomon* said the defendants had steadily refused to believe that any man on the jury would be willing to convict any of the defendants because of being an Anarchist or a Socialist. *Mr. Grinnell* failed to state to you that he had a person by whom he could prove who threw the bomb, and he never expected to make this proof until he found that without this proof he was unable to maintain this prosecution against these defendants; and it was as this case neared the prosecution end of it that the State suddenly changed front and produced a professional tramp and a professional liar, as we will show you, to prove that one of these defendants was connected with the throwing of it. They then recognized, as we claimed and now claim, that that is the only way they can maintain their case here.

They are not charged with Anarchy; they are not charged with Socialism; they are not charged with the fact that Anarchy and Socialism is dangerous or beneficial to the community; but, according to the law under which we are now acting, a charge specific in its nature must be made against them, and that alone must be sustained, and it is the duty of the jury to weigh the evidence as it bears upon that charge; and upon no other point can they pay attention to it. Now, gentlemen, the charge here is shown by this indictment. This is the accusation. This is what the case involves, and upon this the defendants and the prosecution must either stand or fall. This indictment is for the murder of Mathias J. Degan. It is charged that each one of these defendants committed the crime, each defendant individually; and it is charged in a number of different ways. Now, I desire to call your attention to the law governing this indictment and to read it to you; and I am presenting the law to you now, gentlemen, so that you can understand how we view this case and how the evidence is affected by what the law is,

The law says, no matter whether these defendants advised generally the use of dynamite in the purpose which they claimed to carry out, and sought to carry out, yet if none of these defendants advised the throwing of that bomb at the Haymarket, they cannot be held responsible for the action of others at other times and other places. What does the evidence introduced here tend to show? It may occur to some of you, gentlemen, to ask: What, then, can these defendants preach the use of dynamite? May they be allowed to go on and urge people to overturn the present government and the present condition of society without being held responsible for it and without punishment? Is there no law to which these people can be subjected and punished if they do this thing? There is, gentlemen, but it is not and never has been murder, and if they are amenable, as the evidence introduced by the prosecution tends to show, it is under another and a different law, and no attempt on the part of the prosecution to jump the wide chasm which separates these two offenses can be successful unless it is done out of pure hatred, malice, ill-will, or because of prejudice. The law protects every citizen. It punishes every guilty man, and according to the measure of his crime; no more and no less. If a man be guilty of conspiracy, or if he be guilty of treason, he is liable to punishment for that offense, and not for a higher one. This is what the people of the State of Illinois have said, and that is their law. That is what they want enforced, and that is what I stand here for as the advocate of these defendants. I claim for them, and for the entire people of this State, that the law shall be applied as it is found, and as they have directed it to be enforced. Now, what is the statute on conspiracy, of which these defendants may be guilty, if they are guilty of anything?

The proof in this case, with the exception of Gilmer's testimony, showed and shows only that the State has a case within those sections which I have last read to you, and no other, if they have a case against them at all. Now, gentlemen, I have read to you the section of the statute relating to accessories. As I have told you before, it is only the perpetrator and abettor in the perpetration of a crime who, under the decision of almost every supreme court in the United States and England, can be held.

That view of the law, that they must be proven to be accessories to the crime, is the one point only upon which the prosecution can sustain their case, and is the only one upon which this case must proceed, according to our view. Now, these defendants are not criminals; they are not robbers; they are not burglars; they are not common thieves; they descend to no small criminal act. On the contrary, this evidence shows conclusively that they are men of broad feelings of humanity, that their only desire has been, and their lives have been consecrated to, the betterment of their fellow-men. They have not sought to take the life of any man, of any individual, to maliciously kill or destroy any person, nor have they sought to deprive any man of his property for their own



benefit. They have not sought to get McCormick's property for themselves; they have not sought to get Marshall Field's property for themselves, and to deprive Marshall Field of it feloniously, but they have endeavored and labored to establish a different social system. It is true they have adopted means, or wanted to adopt means that were not approved of by all mankind. It is true that their methods were dangerous, perhaps; but then they should have been stopped at their inception. We shall expect to prove to you, gentlemen, that these men have stood by the man who has the least friends; that they have endeavored to better the condition of the laboring man. The laboring men have few friends enough. They have no means, without the combination and assistance of their fellow-men, to better their condition, and it was to further that purpose and to raise them above constant labor and constant toil and constant worry and constant fret, and to have their fellow-men act and be as human beings and not as animals, that these defendants have consecrated their lives and energies. If it was in pursuance of that, wrought up, perhaps, through frequent failures and through the constant force exercised against them, that they came to the conclusion that it was necessary to use force against force, we know not, and we do not expect to prove nor to deny that these defendants advocated the use of force, nor do we now intend to apologize for anything they have said, nor to excuse their acts. It is neither the place nor the time for counsel in this case, nor of the gentlemen of the jury, to either excuse the acts of these defendants or to encourage them. With that we have here nothing to do. Our object is simply to show that these defendants are not guilty of the murder with which they are charged in this indictment. But the issue is forced upon us to say whether it was right or wrong, and whether they had the right to advocate the bettering of their fellow-men. As Mr. Grinnell said, he wanted to hang Socialism and Anarchy; but twelve men nor twelve hundred nor twelve thousand can stamp out Anarchy nor root out Socialism, no more than they can Democracy or Republicanism, that lie within the heart and within the head. Under our forms of government every man has the right to believe and the right to express his thoughts, whether they be inimical to the present institutions or whether they favor them; but if that man, no matter what he advocates or who he be, whether Democrat, Republican, Socialist or Anarchist, kill and destroy human life deliberately and feloniously, that man, whether high or low, is amenable to criminal justice, and must be punished for his crime, and for no other.

Now, what was the object of these defendants, as they are charged, in being so bloodthirsty? Their purpose was to change society, to bring into force and effect their Socialistic and Anarchistic ideas. Were they right or were they wrong, or have we nothing to do with it? As I told you, they had the right to express their ideas. They had the right. They had the right to gain converts, to make Anarchists and Socialists, but whether Socialism

or Anarchy shall ever be established never rested with these defendants, never rested in a can of dynamite or in a dynamite bomb. It rests with the great mass of people, with the people of Chicago, of Illinois, of the United States, of the world. If they, the people, want Anarchy, want Socialism, if they want Democracy or Republicanism, they can and they will inaugurate it. But the people, also, will allow a little toleration of views. Now, these defendants claim that Socialism is a progressive social science, and it will be a part of the proof which you will have to determine. Must the world stand as we found it when we were born, or have we a right to show our fellow-men a better way, a nobler life, a better condition? That is what these defendants claim, if they are forced beyond the issue in this case. . . . In furtherance of that plan, what have these defendants done? Have they murdered many people? What was their plan when they counseled dynamite? They intended to use dynamite in furtherance of the general revolution; never, never against any individual. We will show you that it was their purpose, as the proof, I think, partly shows already, that when a general revolution or a general strike was inaugurated, when they were attacked, that then, in fact, while carrying out the purposes of that strike or that revolution, that then they should use dynamite, and not until then. If it is unlawful to conspire to carry out that thing, these men must be held for that thing. We shall show you that these men, in carrying out their plan for the bettering of the condition of the workingmen, inaugurated the eight-hour movement. They inaugurated the early-closing movement. They inaugurated every movement that tended to alleviate the condition of the workingman and allow him a greater time to his family, for mutual benefit. That is what these defendants set up for a defense. That is what they claim was their right to do, and that is what they claim they did do, and they did nothing more.

Now, gentlemen, we don't say that we desire to go into this proof, because we think it has nothing to do with this case, if our theory is correct; but if we are forced to show why they did these things it is simply to convince you that their objects were not for robbery, not for stealing, not to gain property for themselves, and not to maliciously or willfully destroy any man's good name or his property interests.

We expect to show you, further, that these defendants never conspired, nor any one of them, to take the life of any single individual at any time or place; that they never conspired or plotted to take, at this time or at any other time, the life of Mathias Degan or any number of policemen, except in self-defense while carrying out their original purpose. We expect, further, to show you that on the night of the 4th of May these defendants had assembled peaceably, that the purpose of the meeting was peaceable, that its objects were peaceable, that they delivered the same harangue as before, that the crowd listened, and that not a single act transpired there, previous to the coming of the policemen, by which

any man in the audience could be held amenable to law. They assembled there, gentlemen, under the provision of our Constitution, to exercise the right of free speech, to discuss the situation of the workingmen, to discuss the eight-hour question. They assembled there to incidentally discuss what they deemed outrages at McCormick's. No man expected that a bomb would be thrown; no man expected that any one would be injured at that meeting; but while some of these defendants were there and while this meeting was peaceably in progress, the police, with a devilish design, as we expect to prove, came down upon that body with their revolvers in their hands and pockets, ready for immediate use, intending to destroy the life of every man that stood upon that market square. That seems terrible, gentlemen, but that is the information which we have and which we expect to show you. We expect to show you further, gentlemen, that the crowd did not fire, that not a single person fired a single shot at the police officers. We expect to show you that Mr. Fielden did not have on that night, and never had in his life, a revolver; that he did not fire, and that that portion of the testimony here is wrong. We expect to show you further, gentlemen, that the witness Gilmer, who testified to having seen Spies light the match which caused the destruction coming from the bomb, is a professional and constitutional liar; that no man in the city of Chicago who knows him will believe him under oath, and, indeed, I might almost say that it would scarcely need even a witness to show the falsity of his testimony, because it seems to me that it must fall of its own weight. We expect to show you, gentlemen, that Thompson was greatly mistaken; that on that night Schwab never saw or talked with Mr. Spies; that he was at the Haymarket early in the evening, but that he left before the meeting began and before he saw Mr. Spies on that evening at all. We expect to show that Mr. Parsons, so far from thinking anything wrong, and Fischer, were quietly seated at Zepf's Hall, drinking, perhaps, a glass of beer at the time the bomb exploded, and that it was as great a surprise to them as it was to any of you. We expect to show you that Engel was at home at the time the bomb exploded, and that he knew nothing about it. With the whereabouts of Lingg you are already familiar. It may seem strange why he was manufacturing bombs. The answer to that is, he had a right to have his house full of dynamite. He had a right to have weapons of all descriptions upon his premises, and until he used them, or advised their use, and they were used in pursuance of his advice, he is not liable any more than the man who commits numerous burglaries, the man who commits numerous thefts, who walks the streets, is liable to arrest and punishment only when he commits an act which makes him amenable to law.

I did not expect to address you concerning Mr. Neebe, and it is unnecessary for me to make much comment on that, but we will show you that Mr. Neebe did not know of this meeting, that he

was not present, that he was in no manner connected with it, and there is no proof to show that he was. We will also prove to you, gentlemen, that Mr. Fielden did not go down the alley, as some of the witnesses for the State have testified, but that he went down Desplaines Street to Randolph, and up Randolph, as, indeed, if my memory serves me right, the statements made by Mr. Fielden immediately after the occurrence already sufficiently show.

Now, gentlemen, in conclusion, as I stated to you a moment ago, we do not intend to defend against Socialism, we do not intend to defend against Anarchism; we expect to be held responsible for that only which we have done, and to be held in the manner pointed out by law. Under the charge upon which these defendants are held under this indictment, we shall prove to you, and I hope to your entire satisfaction, that a case has not been made out against them. Whether they be Socialists or whether they be Anarchists we hope will not influence any one of you, gentlemen. Whatever they may have preached, or whatever they may have said, or whatever may have been their object, if it was not connected with the throwing of the bomb it is your sworn testimony to acquit them. We expect to make all this proof, and we expect such a result.

#### THE WITNESSES FOR THE DEFENSE.

*Carter H. Harrison.* Am Mayor of Chicago. On the 4th of May, was present during part of the Haymarket meeting so-called. On the day before there was a riot at McCormick's factory, which was represented to have grown out of a speech by Spies; next morning I received information of the issuance of a circular of a peculiar character and calling for a meeting at the Haymarket that night; directed the Chief of Police if anything should be said at that meeting that might call out a recurrence of such proceedings as at McCormick's factory, the meeting should be dispersed; believed it was better for myself to be there; went to the meeting to disperse it in case I should feel it necessary for the safety of the city; arrived about five minutes before eight; there was a large concourse of people about the Haymarket, but it was so long

before any speaking commenced that two-thirds of the people left; about half-past eight the speaking commenced and the meeting congregated around Crane's building, or the alley near.

Mr. Spies may have been speaking one or two minutes before I got near enough to hear what he said; left the meeting between 10 and 10:05 o'clock that night; heard Spies' speech, and all of Parsons' up to the time I left; when I went over to the station, spoke to Capt. Bonfield, and determined to go home, but I went back to hear a little more; stayed there about five minutes longer and then left. Within about twenty minutes I heard the sound of the explosion of the bomb at my house. While at the meeting thought Spies had observed me when I lighted a cigar, as the tone of his speech suddenly

changed. Prior to that change in the tone of Spies' speech I feared his remarks would force me to disperse the meeting; was there for that purpose; it was my own determination to do it against the will of the police. After that the general tenor of Spies' speech was such that I remarked to Capt. Bonfield that it was tame.

Took no action about dispersing it. There were occasional replies from the audience, as "Shoot him," "Hang him" or the like, but I do not think there were more than two or three hundred actual sympathizers with the speakers. Several times cries of "Hang him" would come from a boy in the outskirts, and the crowd would laugh; felt that a majority of the crowd were idle spectators, and the replies nearly as much what might be called "guying" as absolute applause. Some of the replies were evidently bitter. The audience numbered from eight hundred to one thousand. The people in attendance were laborers or mechanics, and the majority of them not English-speaking people—mostly Germans. There was no suggestion made by either of the speakers calling for immediate use of force or violence toward any person that night; if there had been I should have dispersed them at once. After I came back from the station Parsons was still speaking. It was becoming cloudy and looked like threatening rain. I thought the thing was about over. There was not one-fourth of the crowd that had been there during the evening. I heard many Germans use ex-

pressions of their being dissatisfied with bringing them there and having this speaking. When I went to the station during Parsons' speech, stated to Capt. Bonfield, I thought the speeches were about over; that nothing had occurred yet or looked likely to occur to require interference, and that he had better issue orders to his reserves at the other stations to go home. Bonfield replied he had reached the same conclusion from reports brought to him but he thought it would be best to retain the men in the station until the meeting broke up, and then referred to a rumor that he had heard that night which he thought would make it necessary for him to keep his men there, which I concurred in. During my attendance saw no weapons at all upon any person.

*Cross-examined.* Bonfield told me he had just received information that the Haymarket meeting, or a part of it, would go over to the Milwaukee and St. Paul freight house then filled with "scabs," and blow it up. There was also an intimation this meeting might be held merely to attract the attention of the police to the Haymarket, while the real attack, if any, should be made that night on McCormick's. In listening to the speeches, I concluded it was not an organization to destroy property that night, and went home. My order to Bonfield was that the reserves held at the other stations might be sent home, because I learned that all was quiet in the district where McCormick's factory is situated. Bonfield replied he had already ordered the reserves in the other

stations to go in their regular order.

Bonfield was there, detailed by the Chief of Police, in control of that meeting, together with Capt. Ward; don't remember of hearing Parsons call "To arms! To arms! To arms!"

*Barton Simonson.* Am a traveling salesman; concluded, after taking supper, to take in the Haymarket meeting.

The speakers were northeast from me, in front of Crane's building, north of the alley. Spies said: "Please come to order. This meeting is not called to incite any riot." He then said McCormick had charged him with the murder of the people at the meeting the night before; that McCormick was a liar. McCormick was himself responsible. Somebody had opposed his speaking at the meeting near McCormick's because he was a Socialist. The people he spoke to were good Christian, church-going people. While he was speaking, McCormick's people had come out. Some of the men and boys had started for them, and had had some harmless sport throwing stones at the windows, etc. Then he said that some workingmen were shot at and killed by the police.

Parsons illustrated that the capitalists got the great bulk of the profit out of everything done; remember in his speech he said: "To arms! To arms! To arms!" in what connection I cannot remember. Somebody in the crowd said, "Shoot" or "Hang Gould," and he says, "No, a great many will jump up and take his place. What Socialism

aims at is not the death of individuals, but of the system."

Fielden spoke very loud, and as I had never attended a Socialistic meeting before thought they were a little wild. Fielden spoke about a Congressman from Ohio who had been elected by the workingmen and confessed that no legislation could be enacted in favor of the workingmen; consequently he said there was no use trying to do anything by legislation. A dark cloud with cold wind came from the north. Many people had left before, but when the cloud came a great many people left. Somebody said: "Let's adjourn,"—to some place, I can't remember. Fielden said he was about through, there was no need of adjourning. He said two or three times, "Now, in conclusion," or something like that, and I became impatient. Then I heard a commotion and a good deal of noise in the audience, and somebody said, "Police;" looked south and saw a line of police when it was at about the Randolph street car tracks. The police moved along until the front of the column got about up to the speakers' wagon. Heard somebody near the wagon say something about dispersing; saw some persons upon the wagon; could not tell who they were. I distinctly heard two words coming from the vicinity of the wagon or from the wagon; don't know who uttered them. The words were "peaceable meeting" a few seconds before the explosion of the bomb. As the police marched through the crowd the latter went to the sidewalks on either side, some went

north, some few went on Randolph street, east, and some west; did not hear any exclamation as "Here come the bloodhounds of the police; you do your duty and I'll do mine," from the locality of the wagon or from Mr. Fielden. At the time the bomb exploded I was still in my position upon the stairs. No pistol shots anywhere before the explosion of the bomb. Just after the command to disperse had been given saw a lighted fuse or something come up from a point twenty feet south of Crane's alley, from about the center of the sidewalk on the east side of the street, from behind some boxes; am positive it was not thrown from the alley. I first noticed it about six or seven feet in the air, a little above a man's head. It went in a north-west course and up about fifteen feet from the ground, and fell about the middle of the street. The explosion followed almost immediately within two or three seconds. After the bomb exploded there was pistol shooting. I could distinctly see the flashes of the pistols; fifty to one hundred and fifty pistol shots from about the center of where the police were; did not observe the flashes of pistol shots or hear the report of any shots from the crowd upon the police prior to the firing by the police; stayed in my position from five to twenty seconds. There was shooting going on in every direction, as well up as down; could see from the flashes of the pistols that the police were shooting up. The police were not only shooting at the crowd, but

I noticed several of them shoot just as they happened to throw their arms. I ran down to the foot of the stairs, ran west on the sidewalk on Randolph street a short distance, and then on the road. A crowd was running in the same direction. I was to the rear of the crowd running west, the police still behind us. There were no shots from the direction to which I was running.

Have never been a member of any Socialistic party or association. Before the meeting noticed it was composed principally of ordinary workingmen, mechanics, etc. The audience listened, and once in awhile there would be yells of "Shoot him!" "Hang him." Didn't find any difference in the bearing of the crowd during Fielden's speech from Parsons' or Spies'. In conversation I had with Capt. Bonfield at the station before the meeting that night, I asked him about the trouble in the southwestern part of the city. He says, "The trouble there is that these"—whether he used the word Socialists or strikers, I don't know—"get their women and children mixed up with them and around them and in front of them, and we can't get at them. I would like to get three thousand of them in a crowd, without their women and children"—and to the best of my recollection, he added, "and I will make short work of them;" noticed a few women and children at the bottom of the steps where I was; don't think there were any in the body of the crowd around the wagon. At the time the police came up

there did not observe any women or children.

*Cross-examined.* Went to the Haymarket meeting out of curiosity, believing the newspapers ordinarily misrepresented such things. At that conversation with Mr. Bonfield I testified to, nobody else was present. Capt. Ward was walking around at the time. Believe no one else could hear it.

Fielden said: "The law is your enemy. Kill it, stab it, throttle it, or it will throttle you." Don't know how many lines of police there were. Saw a straight line of police filling the whole street. There was more than one column. I was at that time contemplating the question of my own safety. Didn't see the officer command the meeting to disperse, but heard somebody tell the meeting to disperse. Right after it heard somebody say something of which I caught the two words, "Peaceable meeting." The bomb struck the ground and exploded just a little behind the front line of police.

The firing began from the police, right in the center of the street; did not see a single shot fired from the crowd on either side of the street; didn't know what became of the men in the wagon; don't think there were any shots fired in the neighborhood of the wagon. My firm discharged me.

*John Ferguson.* Am a resident of Chicago; in the cloak business; passed the Haymarket, and, noticing a crowd there, stopped to listen to the speeches; was accompanied by an acquaintance. During Par-

sons' speech, when he mentioned Jay Gould's name, somebody said: "Throw him in the lake!" and a man standing almost in front of me took his pipe from his mouth and halloed out: "Hang him." Parsons replied that would do no good; a dozen more Jay Goulds would spring up in his place. "Socialism aims not at the life of individuals, but at the system." Quite a storm cloud come up. Some one interrupted the speaker with the remark: "There is a prospect of immediate storm, and those of you who wish to continue the meeting can adjourn to"—some hall, but the speaker, resuming, said: "I haven't but two or three more words to say, and then you can go home." I walked away, across Randolph street. Then I saw the police rush out from the station in a body. They whirled into the street and came down very rapidly. We saw a fire flying out about six feet above the heads of the crowd and falling down pretty near the center of the street. There was a deafening roar. Then we saw flashes from toward the middle of the street. That side of the street where the crowd was was dark. We hurried away. The majority of the crowd had gone away on the appearance of the approaching storm. The crowd was very orderly, as orderly a meeting as I ever saw anywhere in the street. Am not a Socialist, nor an Anarchist, nor a Communist; don't know anything about what those terms mean.

*Ludwig Zeller.* Went to the meeting a little past ten; took a position at a lamp post near



Crane's alley. A few minutes after the police came, heard the command of the Captain, but heard no reply from anybody on the wagon or near the wagon. Saw a light go through the air; heard an explosion and shooting, and tried to get out because there were a great many men falling around me, and a few were crying. A great many people were running in the same direction; men were falling before me and on the side of me; heard shooting immediately upon the explosion of the bomb. The shots came from behind me while I ran, from the center of the street, from north and northwest of me. Did not notice any firing back from the crowd at the police, either on Desplaines street or Randolph street.

*Cross-examined.* Since last December, don't belong to any group. Prior to that was a member of the group "Freiheit"; am not an Anarchist; am a Socialist.

*Carl Richter and F. Liebel* swore that, although standing close to the famous wagon, they had heard nothing about "bloodhounds."

*Dr. James D. Taylor.* Examined the scene of the riot on the next day and found that the bullet marks on the building came chiefly from the direction from which the police had charged.

*Wm. Urban.* Am a compositor on the *Arbeiter-Zeitung*; saw something shining; believe this were revolvers in the hands of the police as they came up toward the meeting.

*August Krumm.* Was lighting my pipe, in company with another man, in Crane's alley,

at the time the bomb was thrown. There was nobody there then save a friend and myself.

*Lucius M. Moses.* Have known Harry Gilmer six or seven years; would not believe him on oath.

*John O. Bracey.* Gilmer's reputation was bad, and he was not worthy of belief.

*John Garrick.* Am an ex-deputy sheriff; know Gilmer and would not believe him on oath.

*Mrs. B. P. Lee.* Have no confidence in Gilmer's truth and veracity.

*Robert Lindinger.* Lived with Carl Richter and accompanied him to the Haymarket meeting; stood at the mouth of the alley and saw Spies, Parsons and Fielden; did not see Schwab; had never seen him before in my life; Schwab was not on the wagon when Spies was there; did not hear anybody say, "Here come the bloodhounds," etc.; saw no one in the crowd fire any shots, and saw no pistol in Fielden's hand; am a cornice-maker; have been in this country three years; am not a Socialist, but read the *Arbeiter-Zeitung*.

*William Albright.* Stood in the alley with Krumm and stated substantially the same facts as given by his companion.

*M. D. Malkoff.* Am a reporter for the *Arbeiter-Zeitung*; saw Parsons at Zepf's Hall ten minutes before the explosion of the bomb. He was sitting at the window in company with Mrs. Parsons and Mrs. Holmes. The saloon was pretty crowded at that time. I saw them there when I heard the explosion of the bomb.

*Cross-examined.* Have been five years in the country; in Chicago about two years; was private teacher of the Russian language in Brooklyn; taught Paesig, the editor of the Brooklyn *Freie Presse*. He is not a revolutionist; went to St. Louis for three months, found no work there, and came to Chicago; did not get that letter of introduction from Mr. Spies through Herr Most; have seen Most, but don't know him personally; roomed with Balthasar Rau for about four months; part of that time was after the Haymarket meeting.

I was not a Nihilist in Russia; am not in this country as the agent of the Nihilists, or any other society in Russia. The reporters used to call me a Nihilist because I was a Russian.

*Henry Lindemeyer.* Am a mason. While working in the *Arbeiter-Zeitung*, placed some things on a shelf in the closet off the editorial room. Found no bundle, no large package, no dynamite on the shelf. Saw no indication of greasiness there.

*Cross-examined.* Have known Spies for years, and Schwab; saw them at public meetings at Turner and other halls.

*Edward Lehnert.* Know Schnaubelt; saw him at the Haymarket that night about ten o'clock; was standing; saw Schnaubelt about the time when it grew dark and cloudy.

*William Snyder.* Was indicted for conspiracy in connection with the Haymarket riot, and in jail since 8th May; am a Socialist, a member of the American group of the Internationale; am acquainted with all the defend-

ants except Lingg; saw Parsons and Fielden on May 4, at the *Arbeiter-Zeitung* building. We went over to the Haymarket meeting; got on the wagon and when the police came, got down first in front of Fielden. Fielden did not shoot; he would have killed me if he had shot. We both started for the alley, and there I lost sight of Fielden. Heard no reference to bloodhounds and saw no one shooting except the police.

*Cross-examined.* Used to make addresses to the working people. Never missed an opportunity to show the injustice which they are laboring under.

*Thomas Brown.* Was arrested for conspiracy; belonged to the Internationale; after Parsons had spoke at the Haymarket I and Parsons went to Zepf's saloon. When the bomb exploded, we were sitting there at a table. Fischer was there.

*Henry W. Spies.* Am a cigar manufacturer, brother of the prisoner; went to the Haymarket with him. When brother got off the wagon to hunt for Parsons, we went in a north-westerly direction from the wagon, but Schwab was not there. Schnaubelt and brother went together, and I and Legner followed right behind them. After asking, "Is Parsons here?" and descending from the wagon, August did not go in the direction of Crane's Alley, nor into Crane's Alley. He went as far as Union street, and in fact got down on the side of the wagon, pretty near the middle of it. Just at that time the explosion took place. I asked him what it was. He said, "They have got a Gat-

ling gun down there," and at the same time, as he jumped, somebody jumped behind him with a weapon, right by his back and I grabbed it; in warding off the pistol from my brother I was shot; don't know who did the shooting; didn't see August any more until I went home. August did not leave the wagon about the time the police came, or at any time, and go into the alley. Legner and myself helped him off the wagon just as the explosion came. The firing came from the street.

*Cross-examined.* On 6th May was arrested; told the officer when the bomb exploded I was at Zepf's Hall; that I was not at the Haymarket at all. That was not true; have told the truth now.

*August Krueger.* Saw at the Haymarket the man represented on this picture (Schnaubelt). He was standing with Mr. Lehnert. About ten o'clock he wanted to go home, and wanted me to go along, and I went with him down on Randolph street to Clinton. There I left him. I went to Engel's house about fifteen minutes past ten. Mr. and Mrs. Engel were there. Later Gottfried Waller came in and said he came from the Haymarket, and that 300 men were shot down by the police, and we ought to go down there and do something. Engel said whoever threw that bomb did a foolish thing; it was nonsense, and he didn't sympathize with such a butchery. I am known as "Little Krueger."

*Cross-examined.* Am an Anarchist; had a conversation with Capt. Schaack; was shown a pic-

ture of Schnaubelt and asked whether I had ever seen that man. Don't know whether I answered, "I might have seen him," or what I answered.

*Albert Pruesser.* I telephoned three times to the *Arbeiter-Zeitung* for a speaker for the meeting at Lake View. The committee from the Deering factory wanted Spies; was told that Spies could not come, and he said it would make no difference if they sent some one else. Later he telephoned again and received a reply that Schwab was on the way; went to meet Schwab at the Clybourn avenue car; it was half-past nine o'clock or twenty minutes to ten. They went to Radtke's saloon, 888 Clybourn avenue, remained there ten minutes, and then Schwab went to the prairie and spoke. When he got through we had lunch at Schilling's saloon. Schwab then took a car for the city. It takes forty-five minutes to reach the corner of Clark and Washington streets, and ten minutes to the Haymarket if there is no interruption. Have been a carrier for the *Arbeiter-Zeitung* for a time.

*Johann Grueneberg.* Was an intimate friend of Fischer's; went to Wehrer & Klein at Fischer's request and got some circulars with the line: "Workingmen, arm yourselves and come in full force;" took them to the compositors' room in the *Arbeiter-Zeitung* and then took some down to Spies. Fischer, Spies and I had some conversation, and then I took an order from Fischer to Wehrer & Klein to leave out that line.

*Cross-examined.* Came to

this country from Germany four years ago.

*Mrs. Lissie May Holmes.* Was assistant editor of the *Alarm* for a year. After the meeting of the American group on the evening, May 4th, I with Mr. and Mrs. Parsons went to the Haymarket. Subsequently to Zepf's Hall. Cannot say where Parsons was in the saloon when the explosion occurred; had not heard of the word "Ruhe" at the meeting Tuesday evening.

*Cross-examined.* My name

has been Holmes since November 26th last. Before that my name was Swank. All articles in the *Alarm* under which the initials L. M. S. appear are my articles. Was a member of the American group of the Internationale. That night I went home with Mrs. Parsons and stayed there over night. Mr. Parsons did not go home that night; am an Anarchist as I understand Anarchy. I never advocated arson, or advised persons to commit arson.

#### SAMUEL FIELDEN'S STATEMENT TO THE JURY.

*Fielden.* On May 4th I took a load of stone to Waldheim Cemetery. When I got home, in the *Daily News* saw an announcement of a meeting of the American group at 107 Fifth avenue that night. Determined to go to that meeting instead of to the meeting at which I had engaged to speak. I was there when some telephoning was done with reference to the Deering meeting. Schwab must have left there about ten or fifteen minutes past eight. A request was received from the Haymarket meeting for speakers, in response to which Parsons and I went over. Spies spoke about five minutes longer after we had arrived; then he introduced Mr. Parsons. During Parsons' speech I was on the wagon. After he concluded I was introduced by Mr. Spies to make a short speech. I did not wish to speak, but Mr. Spies urged me. I referred to some adverse criticism of the Socialists by an evening paper, which had called the Socialists cowards and other uncomplimentary names, and I told the audience that that was not true; that the Socialists were true to the interests of the laboring classes and would continue to advocate the rights of labor. I then spoke briefly of the condition of labor. I referred to the classes of people who were continually posing as labor reformers for their own benefit, and who had never done anything to benefit the laboring classes, but had at all times approved the cause of labor, in order to get themselves into office. I cited the case of Martin Foran, who, in a speech in Congress on the arbitration bill that was brought in by the labor committee, had stated that the working classes of this country could get nothing through legislation in Congress, and that only when the rich men of this country understood that it was dangerous to live in a community where there were dissatisfied people would the labor problem be solved. Somebody in the audience cried out, "That is not true," or "That is a lie." Then I went over it again, adding words like these: That here was a man who had been on the spot for years, had experience, and knew

what could be done there, and this was his testimony. It was not the testimony of a Socialist. Then I went on to state that under such circumstances the only way in which the working people could get any satisfaction from the gradually decreasing opportunities for their living—the only thing they could do with the law would be to throttle it. I used that word in a figurative sense. I said they should throttle it, because it was an expensive article to them and could do them no good. I then stated that men were working all their lifetime, their love for their families influencing them to put forth all their efforts, that their children might have a better opportunity of starting in the world than they had had. And the facts, the statistics of Great Britain and the United States, would prove that every year it was becoming utterly impossible for the younger generation, under the present system, to have as good an opportunity as the former ones had had.

Mr. Spies asked me, before I commenced, to mention that the Chicago *Herald* had advised the labor organizations of this city to boycott the red flag. I briefly touched on that, and told them not to boycott the red flag, because it was the symbol of universal freedom and universal liberty.

I was just closing my remarks about that point, when some one said it was going to rain. I said: "Never mind; I will not talk very long; I will close in a few minutes, and then we will all go home." Then I advised them to organize as laboring men for their own protection—not to trust to any one else, but to organize among themselves and depend only upon themselves to advance their condition. Do not think I spoke one minute longer when I saw the police. Capt. Ward came up to me and raised his hand, and said: "I command this meeting in the name of the people of the State of Illinois, to peaceably disperse." I said: "Why, Captain, this is a peaceable meeting," in a very conciliatory tone of voice, and he very angrily and defiantly retorted that he commanded it to disperse, and called, as I understood, upon the police to disperse it. Just as he turned around in that angry mood, I said: "All right, we will go," and jumped from the wagon, and jumped to the sidewalk. Then the explosion came. I saw the flash. The people began to rush past me. Was not decided in my own mind what it was, but I heard some one say "dynamite," and then in my own mind I assented that that was the cause of the explosion, and I rushed and was crowded with the crowd. There were some of them falling down, others calling out in agony, and the police were pouring shots into them. We tried to get behind some protection, but there were so many trying to get there that little protection was afforded. I made a dash for the northeast corner of Randolph and Desplaines streets, turned the corner and ran until I got to about Jefferson street. Seeing there was no pursuit, I dropped into a fast walk. I turned on Clinton, intending to go home.

Immediately after the explosion of the bomb I was struck with a ball. Didn't feel much pain at the time in the excitement, but on

Randolph street I felt the pain; my knee was wet. Then I concluded I had been shot. I began to think about those that had been with me. I thought surely that some of these men must have been killed. I concluded to ride down past the *Arbeiter-Zeitung* building and see if any one was there. But there was no light there. Intending to go up to Parsons' house, I took an Indiana car. When we got to Clinton the driver said: "Why, there is firing going on up there yet," and I saw a couple of flashes up near where I thought the Haymarket was, and I said, "If there is, I am not going up there." I then walked over on Jefferson street north to Lake street, and I saw a terrible crowd of people around there, and thought there might be a good many detectives there. So I turned back, caught a Canalport avenue car and rode to the corner of Canal and Twelfth streets. There I got my knee dressed by a young doctor who was on the stand here, as it was becoming very painful.

I feel sure Mr. Spies was at my side when Capt. Ward was talking. Did not see him after I had spoken to Capt. Ward; I did not see him leave the wagon. Had no revolver with me on the night of May 4th. Never had a revolver in my life. Did not fire at any person at the Haymarket meeting. Never fired at any person in my life.

I first heard of the word "Ruhe" having been published in the *Arbeiter-Zeitung*, and about any significance of that word, when I had been in the County Jail for some days. I never had seen or heard of the word before, and did not hear of it on May 4th at any time, and, as I understand it is a German word, I would not have known what it meant if I had seen it. I do not read German. There was no understanding or agreement to which I was a party, or of which I had knowledge, that violence should be used at the Haymarket meeting, or that arms or dynamite should be used there. I anticipated no trouble of that character. I did not use, upon the approach of the police, and did not hear from any person that night any such expression as: "There come the bloodhounds; you do your duty and I'll do mine."

The first I heard of the Haymarket meeting was after I got to the American group meeting on the night of May 4th.

We drilled not over six times at 54 Lake street, but nobody ever had arms there. We began to meet in August and the last meetings must have been very near the end of September, 1885. There was no drilling during the winter and spring of 1885-86. Once a few men belonging to the L. u. W. V. came in with their guns and shouldered arms, but they did not belong to the American group, and that is the only time that I ever saw any arms at any meeting of our organization.

The shots that were pouring in thick and fast after the explosion of the bomb came from the street—I should judge from the police.

On May 3d I took several loads of stone from Bodenschatz & Earnshaw's stone dock, Harrison street and the river, to different places in the city. I have worked for that firm three or four years. I owned my team and wagon, and they hired those and my services,

and paid me by the day. I have been a teamster for at least six years. I was never before arrested in my life.

*Cross-examined*, Fielden said: I worked in a cotton mill in England at eight years of age, and until I came to the United States. I worked my way up until I became a weaver, and when I left the mill I was what is called a binder. I joined the International Working People's Association in July, 1884, by joining the American group. I suppose I was an Anarchist soon after, as soon as I began to study it. I suppose that I have been a revolutionist, in the sense of evolutionary revolution, for some years. I don't know that I have ever been positively of the belief that the existing order of things should be overthrown by force. I have always been of the belief, and am yet, that the existing order of things will have to be overthrown, either peaceably or by force. I have made a great many speeches on the lake front on Sunday afternoons. I have two dollars' worth of stock in the *Alarm*. Of those that were on the speakers' wagon, I only remember Parsons, Spies and Snyder. There were some others there who were strangers to me. I spoke because Mr. Spies requested me to make a short speech. Mr. Parsons had spoken longer than I thought he would, and I thought it was late enough to close. I don't now remember whether or not I used this language: "There are premonitions of danger. All know it. The press say the Anarchists will sneak away. We are not going to." I have no desire to deny that I did use that language. If I used it—and I don't know whether I did—if I had any idea in my mind at any time which would be expressed in that language, I know for what reasons I would have that idea. I used substantially all that language which Mr. English, the reporter, who was on the stand here, testified as having been used by me in my speech at the Hay-market meeting. I did not say that John Brown, Jefferson, Washington, Patrick Henry and Hopkins said to the people: "The law is your enemy." If I used the language, "We are rebels against it,"—and I possibly did,—I referred to the present social system. I don't remember that I said: "It had no mercy; so ought you." There is not much sense in it, and I will not father it. The report of my speech, as given by Mr. English, has been garbled, and it does not give the connection. I don't accept that as my speech at all. I think I used the language, but you haven't got the sense of it at all, in quoting it in that way.

I did not think there was anything inflammatory or incendiary in my speech. I did not incite anybody to do any overt act to anybody or anything. I spoke generally, from a general standpoint. I meant to say they should resist the present social system, which degraded them and turned them out of employment, and gave them no opportunity to get a living. Somebody threw a bomb. I did not know and do not know now who it was, or anything about it. Still I know, from reading of criminal proceedings, that in cases of that kind they arrest everybody in order to find out who is responsible.

I supposed that I, being one of the participants of the meeting, would be arrested.

If I did make the remark about premonitions of danger in my Haymarket speech, I must have meant that there were so many men striking just then for the eight-hour movement that some trouble might possibly originate between the strikers and their employers, as had been the case in former strikes, and, knowing that all men are not very cool, and some men become aggravated—their condition may have a good deal to do with it—they sometimes commit acts which the officers of the law, in their capacity as such, are compelled to interfere with. I was speaking of the general labor question and the issue that was up for settlement during the eight-hour movement. I had no reference to the presence of dynamite at the meeting. I did not say that John Brown, Jefferson, etc., said that the law was their enemy. What I said in regard to them was, that we occupied, in relation to the present social system, which no longer provided security for the masses, just about the position that John Brown, Jefferson, Hopkins, Patrick Henry occupied in relation to the government and dictation of Great Britain over the Colonies; that they repeatedly appealed to Great Britain to peaceably settle the differences in regard to the port duties, the stamp act, etc., but when it could not be peaceably settled, they could not submit to it any longer, and were compelled to do something else; and it was always the element of tyranny which incited strife, and as it was in that case, so it would be in this. As to the use of the expressions about killing, stabbing, throttling the law, I used them just as a Republican orator, in denouncing the Democratic party, might say, "We will kill it," or "We will throttle it," or "defeat it," or as one might speak of a candidate for office—"We will knife him." I used those adjectives, as any speaker would, in rushing along, throw in adjectives without thinking much of what their full import might be. My remarks that night were intended to call upon the people to resist the present social system—not by force, I had no such idea in my mind that night—so that they would be enabled to live; to call their attention to the fact that by the introduction of labor-saving machinery and the subdivision of labor less men were continually needed, more productions produced, and their chance to work decreased, and that by their organizing together they might become partakers in the benefits of civilization, more advantageous and quicker productions.

*John Bennett.* Saw the man who threw the bomb. The thrower was right in front of me. The bomb "went west and a little bit north." The man who threw it was about my size, maybe a little bit bigger; think he had a mustache, no chin

beard, and his clothes were dark. Do not recognize this photograph of Schnaubelt as being the man who threw the bomb.

*Cross-examined.* I never could recognize anybody; told Capt. Schaack and Mr. Grinnell



that the man who threw the bomb was in front of me, and I could not tell how he did look. I got shot and fell on the sidewalk. I told Capt. Schaack that

I could not describe the man and would not know him if I saw him, and that the man's back was toward me.

#### MICHAEL SCHWAB'S STATEMENT.

*Schwab.* I was co-editor of the *Arbeiter-Zeitung*. On the evening of May 4th went to the *Arbeiter-Zeitung* about eight o'clock. While I was there a telephone message was received asking Mr. Spies to speak at Deering. After I went over to the Haymarket to see whether I could find Mr. Spies, just went through the crowd. North of Randolph on Desplaines I met my brother-in-law, Rudolph Schnaubelt, and talked to him about the matter; then took a car going and went to Deering's factory. Near the car stables was met by a man and asked whether I was Mr. Schwab. I think his name is Preusser. Went up to 888 Clybourn avenue, to see the committee, but the committee was not there; so went directly to the prairie, corner of Fullerton and Clybourn avenues, and there I met some men who told me that they were the committee. Talked with them some minutes, then mounted the stand and made a speech, twenty or twenty-five minutes long, about the eight-hour movement, to the men who had struck that same day and demanded eight hours' work and ten hours' pay. Returned home about eleven o'clock at night.

I did not at any time while I was at the Haymarket enter Crane's alley or any alley with Mr. Spies. I had no conversation with him near the mouth of the alley. I did not walk at any time that night in company with Mr. Spies on the north side of Randolph street from the corner of Desplaines down past Union street and return to where the wagon stood. I did not, in company with Mr. Spies, meet Schnaubelt when Spies handed to Schnaubelt any package or anything. I did not see Spies and did not speak to him at all that night at the Haymarket. I did not say anything to Spies or anybody else in the mouth of Crane's alley about pistols or police, or whether one would be enough. I had no such conversation with anybody at the Haymarket or anywhere. I did not say to Mr. Spies or anybody else at any time before the meeting began or at any other time that if the police came we were ready for them or we would give it to them, or any words to that effect.

When I left the Haymarket the meeting had not begun; men were standing around on all four corners; had seen Mr. Spies last that day in the afternoon. I did not see him again until the next day in the morning, when I came to the office.

*Cross-examined,* Schwab said: Was a member of the North Side group of the International Workingmen's Association until up to the 4th of May. Walked over to the Haymarket from the *Arbeiter-Zeitung* that night through the Washington street tunnel with Balthasar Rau. Then I crossed Randolph street, and about the mid-

ble of Randolph street met Mr. Heineman. Inquired of some persons whom I knew by sight whether they had seen Spies. Stayed there not more than five minutes, then took a car and went east.

#### AUGUST SPIES' STATEMENT.

*Spies.* May 4 last I was one of the editors of the *Arbeiter Zeitung*. Occupied that position since 1880. Prior to that I was engaged in the furniture business. Am a member of the Socialistic Publishing Society, which is organized under the laws of the State of Illinois, and by which the *Arbeiter-Zeitung* was published. Was an employe of that society in my position as editor, and was subject to their control as to the general policy of the paper.

At a meeting of the Central Labor Union of Sunday, May 2, at 54 West Lake street, which I attended in the capacity of a reporter, I was invited to address a meeting of the Lumber-shovers' Union on the afternoon of May 3. As there were no other speakers, I went out. When I came there was a crowd of 6,000 to 7,000 people assembled on the prairie. When I was invited nothing was said to me about any relationship of Mr. McCormick's employes to that meeting. I did not know that the locality of the meeting was in the immediate neighborhood of McCormick's. When I arrived there several men were speaking from a car in the Bohemian or Polish language. Balthasar Rau introduced me to the chairman of the meeting. I spoke from fifteen to twenty minutes. Told the people, who in my judgment were not of a very high intellectual grade, to stand together and to enforce their demands at all hazards; otherwise the single bosses would one by one defeat them. About two hundred persons, standing a little ways apart from the main body, detached themselves and went away. Five minutes later I heard firing, and about that time I stopped speaking and inquired where the pistol shots came from, and was told that some men had gone up there to stone McCormick's "scabs," and that the police had fired upon them. Two patrol wagons came up in great haste on the Black Road, driving towards McCormick's, followed immediately by about seventy-five policemen on foot, and then other patrol wagons came. I jumped from the car and went up to McCormick's. They were shooting all the while. In front of McCormick's factory there are some railroad tracks, on which a number of freight cars were standing. The people were running away and hiding behind these freight cars as much as they could to keep out of the way of the pistol firing. The fight was going on behind the cars. When I came up there on this prairie, right in front of McCormick's, I saw a policeman run after and fire at people who were fleeing, running away. My blood was boiling, and, seeing unarmed men, women and children, who were running away, fired upon, I think in that moment I could have done almost anything. At that moment a young Irishman, who probably knew me or had seen me at the meeting, came running from behind the cars and said: "What kind of a — — busi-

ness is this? What h—l of a union is that? What people are these who will let those men be shot down here like dogs? I just come from there; we have carried away two men dead, and there are a number of others lying on the ground who will most likely die. At least twenty or twenty-five must have been shot who ran away or were carried away by friends;" I took a car and went down town; the same evening I wrote the report of the meeting which appeared in the *Arbeiter Zeitung* of the next day; immediately after I came to the office I wrote the so-called Revenge circular, except the heading, 'Revenge.' At the time I wrote it I believed the statement that six workmen had been killed that afternoon at McCormick's; I believe 2,500 copies of that circular were printed, but not more than half of them distributed, for I saw quite a lot of them in the office of the *Arbeiter Zeitung* on the morning I was arrested; at the time I wrote it I was still laboring under the excitement of the scene and the hour; I was very indignant.

On May 4th was invited to address a meeting on the Haymarket that evening; that was the first I heard of it; had no part in calling the meeting; I put the announcement of the meeting into the *Arbeiter Zeitung* at the request of a man who invited me to speak. The *Arbeiter Zeitung* is an afternoon daily and appears at 2 p. m.; about eleven o'clock a circular calling the Haymarket meeting was handed to me to be inserted in the *Arbeiter Zeitung*, containing the line, 'Workingmen, arm yourselves and appear in full force;' I said to the man who brought the circular that, if that was the meeting which I had been invited to address, I should certainly not speak there, on account of that line; he stated that the circulars had not been distributed, and I told him if that was the case, and if he would take out that line, it would be all right; Mr. Fischer was called down at that time, and he sent the man back to the printing-office to have the line taken out; I struck out the line myself before I handed it to the compositor to put it in the *Arbeiter Zeitung*; the man who brought the circular to me and took it back with the line stricken out was on the stand here—Grueneberg I believe is his name.

I left home that evening about half-past seven o'clock and walked down with my brother Henry, arriving at the Haymarket after eight; there was no meeting in progress, however; simply crowds were standing around the corners here and there, talking together. I called them together; after having looked around for a speakers' stand—we generally had very primitive platforms—I saw this wagon on Desplaines street; and being right near the corner, I thought it was a good place to choose and told the people that the meeting would take place there; there was no light upon the wagon. I left the wagon and in company of my brother Henry, one Legner and Schnaubelt went up the street to find Parsons; Schwab was not with me at that time or at any time that evening; Schnaubelt told me I had been wanted at Deering, but as I had not been at hand Schwab had gone out there. After I left the wagon I did

not go to the mouth of Crane's alley; did not even know time that there was an alley there at all; did not enter with Schwab, had no conversation with him there in which referred to pistols and police, and in which Schwab asked one would be enough, etc., nor anything of that kind. I came company with those I mentioned, up on Randolph street Union and pretty near Halsted street, but, seeing only a couple, probably twenty or twenty-five, standing there scattered, not seeing Parsons, we returned, walking on the north side of Randolph street, as we had in going down; I went on the way addressed the meeting; had no conversation with Schwab about the crossing of Union street, in which we spoke about ready for them and that they were afraid to come; don't remember exactly of what we were speaking, but Schnaubelt and I walked along, were conversing in German; he cannot speak English at all; he wore a light gray suit that night. I did not, return, or at any time that evening, walk with Schwab from Desplaines street to the center of the sidewalk, some fifteen feet south of Crane's alley, and at that point meet Schnaubelt there take anything out of my pocket, or otherwise, and give it to Schnaubelt, or anybody else, at that location.

Spoke about fifteen or twenty minutes; began by stating that I heard a large number of patrol wagons had gone to Desplaines Street Station; that great preparations had been made for a possible outbreak; that the militia had been called under arms, that I would state at the beginning that this meeting had not been called for the purpose of inciting a riot, but simply to discuss the situation of the eight-hour movement and the atrocities of the police on the preceding day; then I referred to one of the morning papers of the city, in which Mr. McCormick said that I was responsible for the affair near his factory; that I had incited the people to commit violence, etc., and I stated that such misrepresentation were made in order to discredit the men who took an active part in the movement; I stated that such outbreaks as had occurred at McCormick's, in East St. Louis, in Philadelphia, Cleveland and other places, were not the work of a band of conspirators, of a few Anarchists or Socialists, but the unconscious struggle of a class for emancipation; that such outbreaks might be expected at any minute and were not the arbitrary work of individuals; I then pointed to the fact that the people who committed violence had never been Socialists or Anarchists, but in most instances had been up to that time the most lawful citizens, good Christians, the exemplary so-called honest workmen, who were contrasted by the capitalists with the Anarchists; I stated that the meeting at McCormick's was composed mostly of humble, church-going good Christians, and not by any means atheists, or materialists, or Anarchists; I then stated that for the past twenty years the wage-workers had asked their employers for a reduction of the hours of labor; that, according to the statement of the secretary,

National Bureau of Labor Statistics, about two millions of physically strong men were out of employment; that the productive capacity had, by the development of machines, so immensely increased that all that any rationally organized society required could be produced in a few hours, and that the mechanical working of men for ten hours a day was simply another method of murdering them. Though every student of social phenomena admitted the fact that society was, under the present condition of overwork, almost retrograding and the masses sinking into degradation, still their demands have been refused; I proceeded to state that the legislators had different interests at stake than those involved in the question, and did not care so much about the welfare of any class of society as for their own interests, and that at last the workingmen had conceived, consciously or unconsciously, the idea to take the matter in their own hands; that it was not a political question, but an economic question; that neither legislatures nor Congress could do anything in the premises, but the workingmen could only achieve a normal day's work of eight hours or less by their own efforts.

When I had gone so far somebody told me that Mr. Parsons had arrived and as I was fatigued, I broke off and introduced Parsons. After introducing Parsons I staid on the wagon; when I stopped and Parsons began, I believe there were pretty nearly 2,000 people there; it was an ordinarily packed crowd; Parsons spoke forty-five minutes to an hour; he stopped about ten o'clock; asked Mr. Fielden to say a few words in conclusion and then adjourn and remained on the wagon until the command was given by Capt. Ward to disperse; somebody behind me said: 'The police are coming.' I did not think even when I saw them that they were marching toward the meeting; the meeting was almost as well as adjourned; there were not over two hundred on the spot; the police lined three or four feet south and Capt. Ward walked up to the wagon. Ward held something in his hand, a cane or a club, and said: 'In the name of the people of the State of Illinois, I command you to disperse,' and Fielden said: 'Why, Captain, this is a peaceable meeting.' And Ward repeated that command, and he turned around to his men, and while I didn't understand what he said to them, I thought he said, 'Charge upon the crowd,' or something to that effect. My brother and one Lezner and several others that I did not know stood at the side of the wagon; they waved out their hands and helped me off the wagon; I felt very reluctant over the coming of the police, and intended to ask them just right they had to break up the meeting, but I jumped down from the wagon; when I reached the sidewalk I heard a terrible explosion; I thought the city authority had brought a cannon out to scare the people from the street; I did not think they would shoot upon the people, nor did I think in the least, at that time, of a bomb. Then I was pushed along; there was a throng of people rushing up, and I was just carried away with them. I went

not go to the mouth of Crane's alley; did not even know at the time that there was an alley there at all; did not enter the alley with Schwab, had no conversation with him there in which I referred to pistols and police, and in which Schwab asked whether one would be enough, etc., nor anything of that kind. I went, in company with those I mentioned, up on Randolph street, beyond Union and pretty near Halsted street, but, seeing only a few people, probably twenty or twenty-five, standing there scattered, and not seeing Parsons, we returned, walking on the north side of Randolph street, as we had in going down; I went on the wagon and addressed the meeting; had no conversation with Schwab, at or about the crossing of Union street, in which we spoke about being ready for them and that they were afraid to come; don't remember exactly of what we were speaking, but Schnaubelt and I, as we walked along, were conversing in German; he cannot speak English at all; he wore a light gray suit that night. I did not, on my return, or at any time that evening, walk with Schwab across Desplaines street to the center of the sidewalk, some fifteen feet south of Crane's alley, and at that point meet Schnaubelt, and there take anything out of my pocket, or otherwise, and give it to Schnaubelt, or anybody else, at that location.

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into Zepf's Hall; the firing began immediately, simultaneously with the explosion; I did not see any firing from the crowd upon the police; I did not hear, as I stood upon the wagon, either by Fielden or anybody else, any such exclamation as 'Here come the blood-hounds; men, do your duty and I will do mine.' Fielden did not draw a revolver and fire from the wagon upon the police or in their direction; I did not, before the explosion of the bomb, leave my position upon the wagon, go into the alley, strike a match and light a bomb in the hands of Rudolph Schnaubelt; I did not see Rudolph Schnaubelt in the mouth of the alley then or at any time that evening with a bomb; I did not at that time or any other time that evening go into the mouth of the alley and join there Fischer and Schnaubelt and strike a match for any purpose.

Remember the witness Wilkinson, a reporter of the News; he was up at the office several times, but I only had one conversation with him as far as I remember; he made an interview out of it. Wilkinson inquired as to the report of some paper that the Anarchists had placed an infernal machine at the door of the house of Lambert Tree, and I told him that, in my opinion, the Pinkertons were doing such things to force people to engage them and to advertise themselves; he then asked whether I had ever seen or possessed any bombs? I said yes; I had had at the office for probably three years four bomb-shells; two of them had been left at the office in my absence, by a man who wanted to find out if it was a good construction; the other two were left with me one day by some man who came from Cleveland or New York, and was going to New Zealand; I used to show those shells to newspaper reporters, and I showed one to Mr. Wilkinson and allowed him to take it along and show it to Mr. Stone. Talking about the riot drill that had shortly before been held on the lake front, and about the sensational reports published by the papers in regard to the armed organizations of Socialists, I told him that it was an open secret that some three thousand Socialists in the city of Chicago were armed; I told him that the arming of these people, meaning not only Socialists but workmen in general, began right after the strike of 1877, when the police attacked workmen at their meetings, killed some and wounded others; that they were of the opinion that if they would enjoy the rights of the Constitution, they should prepare to defend them too, if necessary; that it was a known fact that these men had paraded the streets, as many as 1,500 strong at a time, with their rifles; that there was nothing new in that, and I could not see why they talked so much about it; and I said I thought that they were still arming and I wished that every workman was well armed.

Then we spoke generally on modern warfare; Wilkinson was of the opinion that the militia and the police could easily defeat any effort on the part of the populace by force, could easily quell a riot; I differed from him; I told him that the views which the bourgeoisie took of their military and police was exactly the same



as the nobility took, some centuries ago, as to their own armament, and that gun-powder had come to the relief of the oppressed masses and had done away with the aristocracy very quickly; that the iron armor of the nobility was penetrated by a leaden bullet just as easily as the blouse of the peasant; that dynamite, like gunpowder, had an equalizing, leveling tendency; that the two were children of the same parent; that dynamite would eventually break down the aristocracy of this age and make the principles of democracy a reality; I stated that it had been attempted by such men as General Sheridan and others to play havoc with an organized body of military or police by the use of dynamite, and it would be an easy thing to do it. He asked me if I anticipated any trouble, and I said I did; he asked me if the Anarchists and Socialists were going to make a revolution. Of course I made fun of that; told him that revolutions were not made by individuals or conspirators, but were simply the logic of events resting in the conditions of things. On the subject of street warfare I illustrated with tooth-picks the diagram which had appeared in one of the numbers of the *Alarm*, introduced in evidence here. I said to him that I wasn't much of a warrior, but had read a good deal on the subject, and I particularly referred to that article in the *Alarm*. I said that if, for instance, a military body would march up a street, they would have men on the house-tops on both sides of the street protecting and guarding the main body from possible onslaught, possibly by shooting, firing or throwing of bombs. Now, if the revolutionists or civilians, men not belonging to the privileged military bodies, would form an oblique line on each side of the street at a crossing, they could then very successfully combat the on-marching militia and police, by attacking them with fire-arms or dynamite; and I used Market Square for illustration. I said there was a system of canalization in large cities; now, supposing they expected an attack, they could, by the use of a battery and dynamite, blow up whole regiments very easily. I don't think that I said what Wilkinson testified to here in regard to the tunnel, but I may have given the talk a little color; I knew he wanted a sensational article for publication in the *News*, but there was no particular reference to Chicago, or any fighting on our part; the topic of the conversation was that a fight was inevitable, and that it might take place in the near future, and what might and could be done in such an event. It was a general discussion of the possibilities of street warfare under modern science.

I wrote the word 'Ruhe' for insertion in the *Arbeiter Zeitung* on May 4th; received a batch of announcements from a number of labor organizations and societies a little after eleven o'clock, in my editorial room, and went over them. Among them was one which read: "Mr. Editor, please insert in the letter-box the word 'Ruhe,' in prominent letters." This was in German; there is an announcement column of meetings in the *Arbeiter Zeitung*, but a single word or something like that would be lost sight of under the an-

nouncements. In such cases people generally ask to have that inserted under the head of 'Letter-box.' Upon reading that request, I just took a piece of paper and marked on it 'Briefkasten' (Letter-box), and the word 'Ruhe.' The manuscript which is in evidence is in my handwriting; at the time I wrote that word and sent it up to be put in the paper, I did not know of any import whatever attached to it; my attention was next called to it a little after three o'clock in the afternoon; Balthasar Rau, an advertising agent of the *Arbeiter Zeitung*, came and asked me if the word 'Ruhe' was in the *Arbeiter Zeitung*. I had myself forgotten about it, and took a copy of the paper and found it there. He asked me if I knew what it meant, and I said I did not. He said there was a rumor that the armed sections had held a meeting the night before, and had resolved to put in that word as a signal for the armed sections to keep themselves in readiness in case the police should precipitate a riot, to come to the assistance of the attacked. I sent for Fischer, who had invited me to speak at the meeting that evening, and asked him if that word had any reference to that meeting. He said, 'None whatever;' that it was merely a signal for the boys—for those who were armed to keep their powder dry, in case they might be called upon to fight within the next days. I told Rau it was a very silly thing, or at least that there was not much rational sense in that, and asked him if he knew how it could be managed that this nonsense would be stopped; how it could be undone. Rau said he knew some persons who had something to say in the armed organizations, and I told him to go and tell them that the word was put in by mistake. Rau went pursuant to that suggestion, and returned to me at five o'clock.

I was not a member of any armed section; I have not been for six years; I have had in my desk for two years two giant-powder cartridges, a roll of fuse and some detonating caps. Originally I bought them to experiment with them, as I had read a good deal about dynamite and wanted to get acquainted with it, but I never had occasion to go out for that purpose, as I was too much occupied. The reporters used to bother me a good deal, and when they would come to the office for something sensational I would show them these giant cartridges; I know absolutely nothing about the package of dynamite which was exhibited here in court, and was claimed to have been found on a shelf in a closet in the *Arbeiter Zeitung* building. I never saw it before it was produced here in court. I don't know anything about a revolver claimed to have been found in the *Arbeiter Zeitung*. That was not my revolver, but I always carried a revolver; I was out late at night, and I always considered it a very good thing to be in a position to defend myself; I did not have that pistol with me on the night of the Hay-market.

*Cross-examined, Spies* said: There was no editor-in-chief of the *Arbeiter*; I was looked to as the editor-in-chief; I never was made responsible by the company for the management of the

paper. Schwab's salary was the same as mine; our positions were coördinate. The management of the paper was left with the board of trustees; the editors had very little to say about it. Nobody looked over the editorials before they were inserted. Fischer was merely a compositor of the *Arbeiter Zeitung*; he had nothing to do with the editorials or management of the paper. I had nothing to do with the *Alarm*, except for four or five weeks, when I edited it in the absence of Mr. Parsons.

I had read a great deal about dynamite and thought it would be a good thing to get acquainted with its use, just the same as I would take a revolver and go out and practice with it. I don't want to say, however, that it was merely for curiosity; I can give no further explanation; I got the caps and the fuse, because I would need them to experiment with. I was never present, to the best of my recollection, when experiments were made with dynamite. Neither bombs nor dynamite were ever distributed through the *Arbeiter Zeitung* office; I did not tell Mr. Wilkinson that they were; I never handled any dynamite outside of the two cartridges; never had anything to do with the distribution of dynamite. I know Herr Most; I guess I have known him for three years. I know positively I did not give him the directions where to ship the material mentioned in the letter.

As to the phrase, 'The social revolution, which occurs in my writings, I mean by it the evolutionary process, or changes from one system to another, which take place in society; I meant a change from a wage system, from the present relations between labor and capital, to some other system; by the abolition of the wage system I mean the doing away with the spoliation of labor, making the worker the owner of his own product.

It was about eleven o'clock when I objected to that last line in the circular; I objected to that principally because I thought it was ridiculous to put a phrase in which would prevent people from attending the meeting. Another reason was that there was some excitement at that time, and a call for arms like that might have caused trouble between the police and the attendants of that meeting; I did not anticipate anything of the kind, but I thought it was not a proper thing to put that line in. I wrote the 'Revenge' circular, everything except the word 'Revenge.' I wrote the words, 'Workingmen, to arms!' When I wrote it I thought it was proper; I don't think so now. I wrote it to arouse the working people, who are stupid and ignorant, to a consciousness of the condition that they were in, not to submit to such brutal treatment as that by which they had been shot down at McCormick's on the previous day. I wanted them not to attend meetings under such circumstances, unless they could resist. I did not want them to do anything in particular—I did not want to do anything; that I called them to arms is a phrase, probably an extravagance; I did intend that they should arm themselves; I have called upon the workingmen for years and years, and others have done the same thing be-

fore me, to arm themselves. They have a right, under the Constitution, to arm themselves, and it would be well for them if they were all armed. I called on them to arm themselves, not for the purpose of resisting the lawfully constituted authorities of the city and county, in case they should meet with opposition from them, but for the purpose of resisting the unlawful attacks of the police or the unconstitutional and unlawful demands of any organization, whether police, militia or any other. I have not urged them in my speeches and editorials to arm themselves in order to bring about a social revolution or in order to overthrow the lawful authority of the country.

#### ALBERT R. PARSONS' STATEMENT.

*Albert R. Parsons.* Have resided in Chicago for thirteen years. Was in Cincinnati May 2nd and came back to Chicago on the morning of May 4th; I caused a notice calling for a meeting of the American group at 107 Fifth Avenue, on the evening of May 4th, to be inserted in the Daily News of that evening. After the meeting was through, some one came over from the Haymarket and said that there was a large body of people and no speakers there except Mr. Spies, and myself and Mr. Fielden were urged to come over to address the mass-meeting; we adjourned and walked over; Fielden and myself crossed the river through the tunnel; it was after nine o'clock when I reached the meeting at the Haymarket. Mr. Spies was speaking; I managed to squeeze through the crowd, was assisted upon the wagon; I spoke about three-quarters of an hour and got down from the wagon. I observed white clouds rolling over from the north, and said: 'Mr. Fielden, permit me to interrupt you a moment; it appears as though it would rain; it is getting late; we might as well adjourn anyway, but if you desire to continue the meeting longer, we can adjourn to Zepf's Hall, on the corner near by.' Some one in the crowd said: 'No, we can't; it is occupied by a meeting of the furniture workers.' With that I looked and saw the lights through the windows of the hall, and said nothing further. Mr. Fielden remarked that it did not matter; he had only a few words more to say; met a man whom I knew very familiarly—Mr. Brown; asked him to have a drink with me, as the speaking had made me hoarse, and we moved off to the saloon. There had been no appearance of the police, no explosion or any disturbance up to that time; as I entered the saloon I noticed some four or five gentlemen standing at the bar, among whom I noticed Mr. Malkoff, talking to a gentleman whom I believe was Mr. Allen. I introduced some one to Mrs. Parsons; noticed Mr. Fischer sitting at one of the tables and said a few words to him; then I think I went to where the ladies were, and was standing near them looking out and wondering if the meeting would not close, anxious to go home. All at once I saw an illumination. It lit up the whole street, followed instantly by a deafening roar, and almost simultaneously

volleys of shots followed, every flash of which, it seemed to me, I could see. The best comparison I can make in my mind is that it was as though a hundred men held in their hands repeating revolvers and fired them as rapidly as possible until they were all gone. That was the first volley. Then there were occasional shots, and one or two bullets whistled near the door and struck the sign; I was transfixed; Mrs. Parsons did not move; in a moment two or three men rushed breathlessly in at the door.

*Cross-examined*, Parsons said: I was born in Montgomery, Alabama. Since I came to Chicago I worked as a type-setter for the first nine years; then for a year and a half myself and wife had a suit business on Larrabee street; then for about a year and a half myself and wife made ladies' wrappers and suits, and I went out soliciting orders. For the last two years, since October, 1884, was editor of the *Alarm*, a weekly paper for about a year, and then a semi-monthly. I wrote down the memorandum of my utterances on the night of May 4th. When I referred to the methods which the Chicago Times and the Chicago Tribune and Tom Scott advised against striking workmen, I told them they should defend themselves against such things in any way they could, by arming, if necessary. I did not mention dynamite at that meeting. I possibly mentioned it at other meetings; I said nothing about bombs that night, neither as a defensive means, or something to use against them; I did not, when I said that the present social system must be changed in the interest of humanity, explain to them how the social change should be brought about, because I did not know myself; I think I told the audience that the existing order of things was founded upon and maintained by force, and that the actions of the monopolists and corporations would drive the people into the use of force before they could obtain redress; I might have stated that—I am not sure. I did not tell them that the ballot was useless for them because the majority was against them; that is not correct; the workmen are vastly in the majority; I did not tell them that night that the only way they could obtain their rights was by overturning the existing order of things by force. I could not tell whether there were any strikers present that night. There were very few Socialists present. I am a Socialist. I am an Anarchist, as I understand it.

*Harry Gilmer* (recalled). Saw this gentleman (Graham) at the Central Station, and he asked me if I could identify the man who threw the bomb; answered that I could if I saw him; did not say during the conversation that I saw the man throw the bomb, but that the man had his back to me and had whiskers;

did not say that the man was of medium size with dark clothes, and that I saw him light the fuse and throw the bomb.

*W. A. S. Graham* (recalled). Gilmer just on the stand told me he saw the man light the fuse and throw the bomb, and that he could identify him if he saw him; that the man was of me-

dium height, thought he had whiskers and wore a soft black hat, but had his back turned.

*Cross-examined.* Had this conversation in the afternoon of May 5th; he said nothing about

there being more than one man at that place; he said one man lighted the fuse and threw the bomb; he did not say how it was lighted, whether with a match or a cigar.

#### EVIDENCE IN REBUTTAL.

To the credibility of the witness, *Harry W. Gilmer*, and to their acquaintance with him, the following persons testified: *Judge Tut-hill* of the Superior Court, *Chas. A. Dibble*, *John Steele*, *Michael Smith*, *Benjamin F. Knowles*, *Chester C. Cole*, ex-Judge of the Supreme Court of Iowa, *Edward R. Mason*, Clerk of the U. S. Circuit Court at Des Moines, *Samuel Merrill*, President of the Citizens' National Bank of Des Moines, *Canute R. Matson*, Sheriff of Cook County, *Sylvanus Edinburn*, *W. P. Hardy*, *John L. Manning*, an attorney, and many others. Many of them had known Gilmer in Iowa for many years; others were old acquaintances of his in Chicago; all of them swore that he was worthy of belief.

#### THE SPEECHES TO THE JURY.

##### MR. WALKER FOR THE PEOPLE.

*August 11.*

*Mr. Walker.* Gentlemen of the jury: We stand today in the Temple of Justice to enforce the law. In that temple all men meet upon a footing of absolute equality, even though the criminal blow was aimed at the very source of the law itself. In this Republic, dedicated to individual equality, all men stand equal before the law. No matter what may be the deep turpitude of the crime; no matter where it was framed or what was its outcome or result, when the perpetrator stands before the bar of justice, the Goddess is indeed blind, and she neither sees the enormity of the crime nor the nature of the criminality until after the guilt is established beyond a reasonable doubt. Be he Anarchist, Communist or Socialist, where his tendency is the general leveling of all institutions, the law guards the very criminal by whom the blow has been struck by every letter and every technicality; and the counsel for the defense in this case, who receive every privilege to speak under the letter of the law, sanctified by the public institu-

tions of our country, will invoke, in the name of each of these defendants, even though their object was the total annihilation of the law, every letter and every syllable in their defense. And, if they do, they but do their duty. No man should be convicted who is not guilty of the crime charged beyond all reasonable doubt. The presumption of innocence should be carried through the case from the beginning until it is overcome by proof of guilt made out by the case for the State. These defendants started out under that presumption, and they shall have whatever benefit there is in the law of the State of Illinois. They were presumed innocent at the opening of the case, they have had the benefit of that presumption, and the proof has shown them guilty beyond all reasonable doubt.

It is some six weeks ago the trial of this great case was begun. The jury has listened to the evidence with patience, and the consideration they have given each witness entitles me to expect that the same kind consideration will be shown me in my argument; it is the desire of the counsel for the State to give the fullest outline of the case that no opportunity shall be left to say that there is not a fair trial in the State of Illinois, even of men whose end and aim is the overthrow of all law. When a jury renders a verdict of acquittal because of a fear of the consequences resulting from a verdict of guilty, there is a direct violation of the oaths of the jurymen. Such a verdict shocks the public and tends to the demoralization of the law. If the jury believe the prisoners are guilty, no fear of the consequences should deter them from handing in a verdict of guilty. The fact that they have taken an oath does not change the structure of their intellects. If they can be convinced without taking an oath, they ought to be convinced under oath. Under the laws of the State of Illinois the accessory to a murder is as guilty as the principal, and can be punished as a principal, according to the laws of Illinois. The statute of conspiracy is ample to hold every one of these defendants—even if they number 3,000—guilty of the murder of Mathias Degan on May 4. The men who are on trial are only the leaders.

Mr. Salomon's speech in opening the defense was simply a plea of guilty under the laws of this State. It might not have been so intended, but it was so in law and fact. Mr. Salomon appealed to the jury to find the defendants guilty only of conspiracy, but not of murder. That is, these men could conspire to kill—the other fellow threw the bomb, and he only was guilty of murder. Such a proposition could never be established to the satisfaction of the jury or anybody else. Mr. Salomon had said, "What have the defendants done? Have they murdered many people?" Why, there were only seven men dead—only sixty wounded. "Have they murdered many people!" He seemed to think that because they had not annihilated the whole police force no crime had been committed. That was Mr. Salomon's excuse when he asked the jury to convict his clients of conspiracy only, and send them to the penitentiary for three years. He even admitted that the defendants intended to use dynamite in furtherance of the general revolution. The law holds, however, that where a number of men conspire together for an unlawful purpose, if in furtherance of a common design a murder is committed, all the parties who were in the conspiracy are as guilty of that murder as the man who committed the actual deed. It has been proved that all the defendants were accessories before the fact to the crime of murder, and were therefore guilty as principals and punishable as such.

All who entered into a conspiracy in which murder resulted were guilty of murder. The defense had been collateral to an extent, and mendacious to a degree which had never been equaled before. The bomb was thrown in furtherance of a design, and yet they said it was only a conspiracy. They might just as well say that the men who conspired at the close of the war to murder the President and Secretary of State were guilty only of conspiracy, and not of murder, because they were engaged in a rebellious revolution. But they were guilty of murder because they conspired to kill Lincoln. Payne did not kill Lincoln, but he was convicted because he conspired to kill him. Did Spies deny a conspiracy, or



Schwab, or Parsons? Not one of them, except Fielden. They wanted to settle this case by making an attack upon Harry Gilmer, the veteran soldier, whose good character had been proved by reputable citizens in all walks of life. Yes, this bomb was thrown in furtherance of the social revolution—in furtherance of the plot to annihilate the police.

It was generally the rule that the person who planned an unlawful act did not do it himself. The arch-conspirator was generally at a safe distance while the tool and dupe did the act. I agree with Mr. Salomon that the defendants were guilty of conspiracy—guilty of a conspiracy to bring about a social revolution. The bomb was thrown in furtherance of this social revolution, and the methods of the defendants had been in furtherance of it, but I do not agree with Mr. Salomon that they could only be convicted of conspiracy. They were all guilty of murder under the law—every one of them—and no kind of affability or mendacity could take away that law. In the Lamb case, in 96 Ill., a number of people conspired to throw down a building which was a nuisance, but could not be removed by law. A stone was accidentally thrown and a man was killed, and it was held that all who were engaged in the unlawful proceedings were guilty of manslaughter, as well as the one who threw the stone.

There was one question that might come up in the case, and that was the nature of the assembly of the meeting at the Haymarket. It was an unlawful assembly. To show the difference between an unlawful assembly and a riotous assembly: a riotous assembly is one where riot actually takes place, while an unlawful assembly is one where the meeting is held for the purpose of committing riot, but it is not committed, and the assembly goes away.

There was another provision of the law by which the defendants could be held. The statutes defined an accessory as one who stood by and aided in a crime or advised, encouraged or abetted in the perpetration of a crime. An accessory should be adjudged as principal, and punished as such. An accessory might be convicted before or after the punishment

of the principal, or might be punished if the principal were not punished. One could conceive of no conspirator who, under the statute, was not an accessory before the fact. But there could be a conspirator who merely encouraged the act. All accessories were not conspirators, but all conspirators were accessories. A conspirator could be convicted of riot, even though he were not present when the riot took place. Every one of the conspirators was guilty of murder—even the 3,000 members of the *Lehr und Wehr Verein*. Every defendant who made a speech on that night inciting the riot was guilty, whether he were there when the bomb was thrown or not. There was not a man who was present at the meeting at 54 West Lake street on May 3 but was guilty of conspiracy. Their responsibility did not cease because after starting the ball they changed their minds, or pretended to change their minds, and tried to stop it. In a case from the North Carolina reports, the defendant urged others to assault an officer, but took no part in the assault himself, and even urged the others to desist after the assault had been begun. He was, however, convicted of assault.

The questions under discussion were: "Was there an unlawful assemblage on the Haymarket on the 4th of May? Was a bomb thrown on the Haymarket on the 4th of May in furtherance of a conspiracy? Was there a murder in pursuance of a common design, and were these defendants in the conspiracy?"

Every witness who testified for the defense was a reader of the *Arbeiter Zeitung* and the tool of August Spies. An article in the *Alarm*, of December 26, 1885, and republished four weeks later, entitled, "Nihilism," treated on the coming revolution against society, and that the Nihilist knew but one science—the science of destruction. What did that mean? Murder had been reduced to a fine art. The men who read that article were the witnesses who appeared for the defense, not one of them an American citizen or a naturalized citizen, none of them in this country but two or three years. These were the men who were called out

to disqualify Harry Gilmer, the old soldier, and they asked the jury to discredit this man who had defended law and order under the American flag. The witnesses belonged to the revolution. They got all their advice from the revolutionists. They got it from the *Alarm*, from Spies, or Schwab, or the "Science of Revolutionary Warfare," Herr Most's book. Before they started out they followed the letter of their lawgivers. In Herr Most's book, directions are given for revolutionists to address one another with fictitious names. Another passage said if a revolutionist wanted to do anything he should go and do it and not say anything to anybody about it. How did that tally with what Spies said at the Haymarket? Wouldn't a man who would kill for the social revolution lie for the same cause? Was it a hard thing for a man to take the stand and say he was not a Socialist when he knew that it could not be proved that he was?

Most's book advises converting the witness stand into a speaker's stand, and if all other means fail to throw the blame on a lesser Socialist. Spies called Fischer a "mere compositor," and said he was responsible for the word "Ruhe." Here was the great editor of that organ of murder, rapine, and incendiarism shifting the blame on a subordinate. Who are the defendants? Who is their advisor? They had started out agreeing to swear to perjury. There could be no argument made for their motive of murder. They feasted on prescriptions of how men could be poisoned. It was made plain by Most's book why Parsons converted the witness stand into a propaganda. It took him an hour to make a speech which he delivered in forty-five minutes at the Haymarket. There had been a conspiracy in this community to overthrow the government of Illinois for years and years. In a speech in Grand Rapids, in 1885, on George Washington's Birthday, the arch conspirator of them all had said there were 3,000 armed men in the city of Chicago ready for the social revolution. The Socialists, he said, were in favor of the eight-hour movement be-

cause it would aid them in overthrowing the government. This was August Spies, and he set the time as the 1st of May, 1886, and said he was a rebel, and if he failed he would be hanged.

Again, at West Twelfth Street Turner Hall, August Spies, on Oct. 11, 1885, prophesied the social revolution on May 1. This meeting was reported in the *Alarm*, and a resolution was also published in which workingmen were called upon to arm themselves for the coming event. The Socialists also promised their aid so long as the wage workers presented a defiant front to "our common enemy." What did this mean? Was there a conspiracy? At that meeting Spies said the most forcible argument was the gun and revolver. In the *Alarm*, April 3, Parsons wrote of the "Coming Revolution." He thought the attempt to inaugurate the eight hour system would break down the capitalists and lead to a social revolution. Was there no conspiracy? In that same number was the article, "It is Coming"—the social revolution. In the next number, April 2, the very last number, but six days before the 1st of May, and but ten days before the murder of Mathias Degan, Parsons wrote over his own signature that the "official leaders" of the trades assemblies were trying to prevent the wage workers from using the only weapons that would bring them their rights. But the bomb was thrown in the city of Chicago, and the eight hour movement was absolutely ruined, and it was due to such men as Spies, Parsons and Schwab. In the last issue of the *Alarm* there appeared this paragraph: "The social war has come, and whoever is not with us is against us." Was there a conspiracy? Was the bomb thrown in pursuance of the common design? The advertisements of the armed section of the American group appeared in every issue of the *Alarm*.

The fact was pretty well established, that there was a general conspiracy, and I will try to prove that there was a special conspiracy. Die Fackel (The Torch) said on Sunday: "Come Monday night." This was in the letter

box, and was a signal, and they all went to that meeting Monday night on Emma street, and there Engel's plan was proposed, and on Monday afternoon, at the request of the Central Labor Union, Spies started for McCormick's. For fear that he would be charged with the riot there he had denied it. But he saw ten thousand men without any reason attack the scabs for the social revolution. "Isn't it ripe?" said Spies, "and am I not ripe in the social revolution?" Because the police refused to be stoned to death it made Spies' blood boil as he stood behind a freight car out of the way of the bullets. Spies said on the night of May 4, "Blood has flown," and Fielden said, "The skirmish lines have met." In an editorial from the *Arbeiter Zeitung* of May 4, Spies advised the workingmen, if they wanted to see the eight hour movement in effect, to arm themselves. Reference was made to McCormick's, and the editorial said, had the workingmen been armed with good weapons and one single dynamite bomb not one of the murderers would have escaped. As it was only four were injured. That was too bad, and still Spies did not advocate force! Spies returned to the office and wrote that circular, "Revenge!" He said he did not write it in English, but he never denied writing it in German. But it did not matter whether he wrote it or not. He wrote, "To arms! to arms!" What did he mean by that? He said, "Your masters sent out their bloodhounds, the police." Did he mean that or not? "To arms! We call you to arms!" It is the cry of the revolutionist. It is the cry of the Anarchist. And yet the English was tame compared to the German, because they relied on the Germans.

The "Revenge" circular as printed in the *Arbeiter Zeitung*, had it no design against individuals? Why, they had a most damnable malice against the police. Bonfield, for the second time, stood in the way of the social revolution. What difference did it make whether Spies wrote "Revenge" at the head of the circular or not? Thousands of these circulars were distributed. Did that mean that there

was a conspiracy? It has not been denied that there was a meeting at 54 West Lake street Monday night, and Lingg was there ready to make a bomb. There was a circular distributed that afternoon by a horseman. Presumably this man was Rau, but it is not known. He was the Paul Revere of the social revolution. Then there was the announcement, "Y, come Monday night." That brought delegates from the north side group, the south side group, and all parts of the city. It was agreed that if the conflict took place the word "Ruhe" should be published, and all the Socialists should turn out and cut the telegraph wires, and fire the houses and buildings. It had been suggested that the meeting should be held at the market square, but Spies said, "No, it is a mouse-trap; we will go to the Haymarket." There were alleys there and side streets. When seven men died at the Haymarket they saved the city of Chicago. Had they been two hours later the flames would have been out at Wicker Park. The north side group was to destroy the north side. Spies said he did not know how the word "Ruhe" came to him. Some one unknown to him had sent it in with the request that it be put in the letter-box of the *Arbeiter Zeitung*, and the editor-in-chief wrote the word "Ruhe" on a piece of paper and put it in. It was a labor announcement. Without a word he did so, and then pretends that he did not know what it meant. He asked Fischer what it meant, and Fischer said it was harmless. He said it only meant, "Keep your powder dry." That was the explanation of the word "Ruhe." Then what explanation did Spies give of the announcement, "Y, come Monday night?" He said Rau put it in. There had been a meeting of the armed section of the American group, and it meant that they should keep themselves in readiness. Spies said he told Rau that it was a very foolish thing. What! Foolish to arm themselves and keep their powder dry? And that was all that he knew that "Ruhe" meant. So much for "Ruhe," so much for Spies and Fischer.

Parsons did not deny that he knew a conspiracy was going on. He was the worst of all the defendants. He, at least, was born on American soil. He stood alone, the only American among the conspirators. Did he know of the conspiracy? Why, he had been in it for years. He was at that meeting for sewing girls, when not a sewing girl was there; Parsons was there; Mrs. Holmes was there, but where were the sewing girls?

The witness Thompson has not been impeached by a single witness. An attempt was made to impeach Gilmer, but he told the truth, and the jury believe him. Parsons said: "I have some resistance in me; have you in you?" What was the meaning of this? Was Schwab in the conspiracy? Schnaubelt went across the ocean. Schnaubelt was Schwab's brother-in-law. Schwab was the co-editor of the *Arbeiter Zeitung*. "Will one be enough?" Did Gilmer tell the truth? No, the word of the revolutionist was the stronger.

*August 12.*

Having shown the connection of Spies, Lingg, Engel and Fischer with the conspiracy, I would now call attention to Fielden. Fielden had said: "There are premonitions of danger. Everybody knows it. The press says the Anarchists will sneak away. I say they will not." Neebe had shown his connection with the conspiracy by distributing the "Revenge" circulars. The file-dagger was made with grooves, in accordance with the instructions in Most's book, so that the grooves could be filled with poison. Fischer was the lieutenant of Spies and one of the most active participants in the great conspiracy. On that fatal night of the 4th of May, after the bomb, which Spies fired and Schnaubelt threw, had exploded, Lingg and Seliger were near the Larrabee Street Station. They heard the call for assistance and saw the patrol wagon start off. Lingg had a bomb and called upon his companion for a light, and it was only because Seliger hesitated that the police were saved a fate like that meted out to the officers at the Haymarket. There

could be no doubt that the connection of all the defendants with the conspiracy had been proved.

The next question to come up was: "Was the bomb thrown in furtherance of a common design?" If there were a common design it made no difference who threw the bomb. All the parties connected with the conspiracy were guilty, no matter who committed the deed. An alibi had been sworn to for Parsons and Fischer, but who were the witnesses who swore they saw these men at Zepf's Hall? Men who were in the conspiracy themselves. No one of the other fifty people who were in the saloon had sworn that they saw them there. The defense placed its whole reliance on the impeachment of Gilmer, but this impeachment had not been successful. The defense had placed a number of witnesses on the stand who had sworn that Spies was not on the wagon after Fielden had commenced to speak. There could be no doubt, however, that Gilmer had told the truth, and that Spies went into the alley just when the witness said he did, before the bomb was thrown.

The most cruel thing in this whole case, and in the defense from beginning to end, is the violent and unjustifiable assault made upon the police department of this city. The counsel who opened for the defense told you that he would prove that Captain Bonfield and his associates had concocted the most awful conspiracy against the Socialists of Chicago ever known or heard of. They have carefully endeavored to make that defense. I should have thought that the blood of the seven dead policemen was sufficient refutation of this awful accusation. Such evidence is outrageous. So is the claim that the police fired first on the night of the riot. The men who stood as firm as a rock on that awful night, who never flinched or trembled, and who saved this city by as sublime an exhibition of courage as the pages of history ever described, are traduced and maligned by the Nihilist and Socialist who swear according to instructions and perjure their souls. And those men, in whose bodies thirty and forty pieces of deadly bomb were found, fired



first! Who shot first? What would Barrett say if he were alive? Ask Miller, through whose body the deadly bullet pierced clear through; ask Sheehan; ask one and all of the brave men who fell that night in discharge of their duty. Ask Hull, the reporter. Was there a conspiracy on the part of the police? The suggestion is absurd and ridiculous.

My duty in this case is almost done, and I thank you, gentlemen, for the attention you have given me. When the arguments are closed the responsibility lies with you. You stand now, for the first time in this country, between anarchy and law, between the absolute overthrow of the present system of society and government, by force and dynamite, and constitutional law represented by Republican institutions. Do not forget the weight of your responsibility and its awful magnitude, and as the magnitude of that responsibility is vast, no motive of any kind should prevent you carrying out the exact letter of the law. The foundation stone of the great public edifice of justice had been attacked. Shall it stand erect? Gentlemen, that rests with you. The police have done their duty. They gave their best blood to uphold the law. They stood as a man upon its letter and demand, and they never swerved or flinched from their duty. Let the jury have the same courage, the same spirit and the same fortitude under its responsibility. They can, indeed, rest in peace. The flowers of spring shall bloom upon their graves, moistened by the tears of a great city. Outraged and violated law shall be redeemed, and in their martyrdom anarchy shall be buried forever.

MR. ZEISLER FOR THE PRISONERS.

*August 13.*

*Mr. Zeisler.* Gentlemen: It is not only necessary to establish that the defendants were parties to a conspiracy, but it is also necessary to show that somebody who was a party to that conspiracy had committed an act in pursuance of that conspiracy. Besides that it is essential that the State should identify the principal. This is the law of the State and of

the land and of the Constitution of the United States. If the principal is not identified, then no one could be held as accessory. Upon this theory the case must stand or fall, and it was for this reason that the defense impeached the testimony of Harry L. Gilmer, as that testimony is vital for the case. Mr. Walker had stated that there was a conspiracy to inaugurate the social revolution on the 1st of May, citing in support of the claim the conversation between Spies and Moulton at Grand Rapids, a resolution adopted at the West Twelfth Street Turner Hall in October, 1885, and a conversation between Spies and Reporter Wilkinson; but the reports of these matters in the newspapers at the time could not be accepted as evidence, as newspapers are frequently given to misstatements.

Now, what does that testimony amount to?—the testimony of Mr. Moulton, the testimony of Mr. Wilkinson and the testimony in regard to the resolutions adopted at the West Twelfth Street Turner Hall? Nothing but the fact which is known to all Chicago, that the laboring classes had combined to fight for an eight-hours' work day on and after the 1st of May. That is one thing. And another thing as far as these resolutions are concerned, that it was resolved that, inasmuch as the workingmen had to anticipate that the employers would call out the police and militia against them, that they should arm themselves to meet the employers by the same means that they, the employers, used.

Now, further than that, Mr. Spies has spoken with Mr. Moulton and with Mr. Wilkinson about the coming social revolution; and when asked by Mr. Moulton, "How can you ever accomplish such a result? How can you ever bring about the social revolution? Under what circumstances can it be done?" he says it can be done at a time when the workingmen will be unemployed. Substantially the same thing was said to Mr. Wilkinson at the time of that interview last January. Now, the State's Attorney and his associates argue to you that Spies said himself the social revolution is coming. When is it coming? On the 1st of May. Can that be taken literally?

In the progress of the civilized world a social revolution is inevitable, not by the use of dynamite or force, but by the peaceable forces at work among the people. Now, the attorneys for the State talk to you about the social revolution, and try to make you believe that the social revolution means bombs and dynamite, and killing and arson and murder and all crimes that we know of. Mr. Fielden on the stand gave the proper expression. Asked whether he believed in the revolution, he said: "Yes, in the evolutionary revolution." And I tell you, gentlemen of the jury, this social revolution is coming—this social revolution in the sense in which Webster defines the word Socialism.

We have not denied that the defendants had declared that they would head a procession to go and sack Marshall Field's or Kellogg's store, because it was a fact, but if after such advice had any one of them taken the lead in any such procession? No. They went and armed themselves with beer. That is what they did. On the night of the Board of Trade opening Parsons and Fielden proposed to lead the crowd to attack the groceries and clothing houses, but what did they do? They gracefully retired into the room of the *Arbeiter Zeitung* office and were interviewed by a reporter about the terrible effects of a fulminating cap. Did any one come up and inquire why they had not led the procession to those places? They did not, as everybody understood what was meant.

The listeners of these people are not very highly educated men. They are laboring men who, raised in poor families, did not have the benefits of a college education; men who since that time worked at manual labor from the early morning until late evening. They could not in the nature of things be very intelligent and highly cultivated and educated. Now, Fielden and Parsons and Spies could not talk to those men by stating to them abstract principles of social science; but they told them: "Here, look at this state of things. There is a man who owns three hundred million dollars; there is another man who owns one hundred million. You starve, you

get starvation wages. Is that a just condition of things? Now, I tell you, Mr. Marshall Field, who owns twenty-five millions of dollars, has no right to own them. I tell you, you have a right to take from the property which he has accumulated; part of it belongs to you. By natural, by equitable laws this man is not entitled to live in a palace while you starve. I am going to lead you down, if you want me, at once, and we will supply our wants from there." What is that? Is that an offer to go there? Is that an advice to go there? It is an illustration, as you give it in school to a child which cannot understand abstract principles of science. When they say to them: "You have a right to take from Marshall Field and Kellogg," that means simply in the present state of society that is allowed, but this is not a just and equitable condition of affairs, and if it were as it ought to be you would have a right to share with Marshall Field what he owns. Take it in this common-sense view and don't allow yourselves to be deceived by declamations on the part of the attorneys for the State.

Can a revolution be made? A revolution is a thing which develops itself, but no single man nor a dozen of men can control the inauguration of a revolution. The social revolution was fixed for the 1st of May! Just think of it! The social revolution, the revolution by which the present state of proprietary conditions should be changed all over the world, was to be inaugurated by Mr. Spies and by Mr. Parsons and Mr. Fielden on the first day of May! Has ever a ridiculous statement like that been made to an intelligent jury? But all that is told you not because they believe it, but because they want to make you blind to the real issues in this case, by telling you that the social revolution was coming on the 1st of May, and that Inspector Bonfield by his cry: "Fall in, fall in," on the night of May 4th, saved the country from the social revolution; by that they want to deceive you, they want to scare you, they want to show you the monstrosity of these defendants. The social revolution to be brought about or inaugurated by the throwing of a bomb on the night of May

4th! What do you take these men for? Are they fools? Are they children? Don't you see what their ideal is, and the last aim and end of theirs? It is the social revolution, yes, but not the social revolution brought about by the throwing of dynamite. It is the social revolution which will give the poor man more rights and which will do away with pauperism. And the means are left to the future; but for the present, in order that you may be strong and respected and be a power in the land, arm yourselves, organize. That is the meaning of it.

As to the evidence showing the finding of dynamite and bombs in the *Arbeiter-Zeitung* office, the man who calcimined the closet in which the bag of dynamite was found, had proved that there was nothing of the kind there when he went in to search for a brush just immediately preceding the arrival of the police. The officer said the dynamite was found on a floor below that of the closet, in a room not used by Spies and not occupied by him at the time of the police search, but in the counting room and on being recalled by the State, that the package was found in Spies' editorial room. As to the bombs there was no secrecy, and Spies admitted that he had one more bomb than the police had discovered. That information was volunteered on the witness stand, and the possession of those bombs explained.

That is the testimony in regard to the arsenal of dynamite and bombs and weapons of destruction at 107 Fifth avenue, and Mr. Spies bragged about three thousand revolutionists ready to throw bombs and to annihilate the police. What was it? Braggadocio; the same object which all these people had in advocating the use of force, in calling upon workingmen to arm themselves, to organize, to buy weapons and all that sort of thing; and the purpose for which they did it openly and publicly was the same purpose Mr. Spies had in bragging that there were three thousand revolutionists—to scare the capitalists, to scare them into yielding to the demands of the workingmen, to try to induce them to make concessions to the laboring classes, as Mr. Fielden said in his speech on the night of May the 4th. And remember, gentlemen of the jury,

that it has been testified to by all the witnesses who spoke in regard to the speeches and articles of these men, that they always made the same argument. Now, Mr. Fielden made the same argument a hundred times before. "The employers will not like to see dissatisfied workingmen in the community, and the laborer can get some relief if the employers find that there are dissatisfied workingmen in the city." That was the reason why they told them, "Arm yourselves and organize." That was the reason why Mr. Spies bragged about the three thousand revolutionists and about the bombs ready to be thrown; that was the reason why he told Mr. Wilkinson all about their plans.

It was ridiculous that a social revolution was to have been inaugurated with the bombs made by Lingg; there had been no preparation for it.

What is a conspiracy? What were you used to understand by the word conspiracy all your lifetime? Isn't in the first place secrecy the test of a conspiracy? Was there anything secret about the doings of these men, or about their teachings and writings? When they vented their feelings at 54 West Lake street at the meeting of the American group and told the people to go to Marshall Field's and Kellogg's, and offered to head the procession, told them about their rights, told them to use force, told them to arm themselves and to organize, the next morning the daily press of the city of Chicago, which reaches five hundred thousand people, and the State's Attorney's office, and the Mayor's office, and the office of every authority in the city of Chicago were informed of it.

To constitute a conspiracy they must agree with one another to do an unlawful act; one must have communicated the purpose to another, and the others must have consented to it. Nothing of this kind has been done. They had simply propounded principles and expressed truths from their standpoint.

If that was a conspiracy, and that conspiracy has existed for three years, why has the State's Attorney, or his predeces-

sor in office, yet not prosecuted those who are parties to that conspiracy? The law of the State of Illinois makes it his duty to prosecute every crime which comes to his knowledge. He may plead that he has not known of it. If he did not, then it was culpable negligence that he did not know it. If he will answer to you that as long as those people did not do any overt act there was no reason for him to interfere, then I say as long as these people have not done any overt act there was no conspiracy. There is no way of escaping this consequence, gentlemen of the jury; to every logical mind it is clear. Either the State's Attorney himself must plead guilty to the charge of the murder of Mathias J. Degan, or every one of these defendants who cannot be shown to have actually thrown or lighted the bomb must be acquitted. If it was not conspiracy then, if they had committed no crime up to the 4th of May for which it was the duty of the State's Attorney to prosecute them, then what have they added to make their doings murder—to make them amenable to the law on a charge for the highest and gravest offense, the most heinous crime known to law.

As to the special conspiracy entered into by a number of persons at No. 54 West Lake street, of all the defendants it had only been shown that Engel and Fischer were present. We deny that Lingg was there or that any evidence had been introduced to prove it. The only evidence of a conspiracy was that of Seliger, who testified that Lingg had asked him if he should throw a bomb. Fischer and others who saw the word "Ruhe" in the *Arbeiter-Zeitung* did not go to Wicker Park, but went elsewhere. What does Waller's testimony say? It says that on the appearance of the word "Ruhe" all should go to their meeting places in the outskirts of the city, and that none of them were to be at the Haymarket except the observation committee.

Has "Ruhe" any reference to the Haymarket meeting? Does it not rather show that the parties who conspired there were not to take part in the Haymarket meeting at all? What, then, has the evidence in regard to that meeting got to do with the case?

Now, to return for a moment to Lingg's alleged attempt to throw a bomb. Has there ever been heard such a ridiculous story as that? It is an absolute falsehood upon its face. A revolutionist, a true disciple of Herr Most, goes out with bombs in his pocket, next to his friends, and takes a walk, and when he goes to the station and wants to throw a bomb into the station he isn't even provided with a light to ignite the fuse; he has to ask his friend, "Have you got a light?" And the other one says he hasn't got it or makes some kind of excuse. Don't you see that all that testimony is given in order to show you, or in order that Mr. Seliger may show himself to you as a highly moral person who has been the dupe of Lingg? He, the man who has been an Anarchist for years and years—and his wife herself says so—he has been persuaded by Lingg to make bombs, he has been misled by Lingg, has been the dupe of Lingg. Seliger, the man with a full beard, a man of over thirty years, has been the dupe of this innocent looking fellow, Lingg! If one was the dupe of another, then Lingg surely was the dupe of Seliger. Seliger is the one who was arrested first. In order to save his own worthless neck, he betrays his friend and companion and swears against him, and upon the testimony of these treacherous lips you are asked to convict Lingg.

We have shown that there was no conspiracy, no general conspiracy, the alleged conspiracy of May 3 had no reference whatever to the Haymarket meeting; the throwing of the bomb at the Haymarket meeting was in direct contradiction of the agreement by the conspirators of May 3, and if one of them had done it, he would have done contrary to the conspiracy. The Haymarket gathering was called for the purpose of denouncing the atrocious act of the police in shooting down their brethren at the McCormick factory. That was the only purpose of the meeting, as Mr. Waller testified. Of course his testimony is the one that the State relies upon mostly. Now, what was the occasion of calling such a meeting to denounce the act of the police? It was the meeting at McCormick's factory.



As to the meeting near McCormick's factory, no one had testified to what Spies had actually said on that occasion, and not a single witness had been produced to prove that Spies had then and there incited men to riot. Witnesses for the State had shown that Spies continued talking after many of the men had started toward McCormick's factory. Did any one suppose he would thus quietly continue speaking there if he had precipitated that riot? I do not excuse the men for stoning the factory—it was wrong—but that did not give the right to the police to shoot at those excited people. The Haymarket was an ordinary, peaceable meeting, and on the day Spies wrote the "Revenge" circular Parsons was on his way back from Cincinnati and Fielden in a suburban town in a quarry. There was no connection with the printing of the "Revenge" circular and the Monday night meeting, and Spies knew nothing about the call for that meeting.

It was known by the State's Attorney that he had no case, and therefore he endeavored to procure the conviction of the defendants by such testimony as that of Gilmer, who never would have been put on the stand had Mr. Grinnell not been inspired by malice against them. The defendants had sought the removal of Captain Bonfield because they believed he was too much in favor of the use of the club. For that reason Bonfield went to the Haymarket meeting bent on mischief.

I intended to be quiet, and you must excuse me if from time to time I have not been so. My indignation has carried me away. I cannot bear to see the attorneys of the State try to secure the conviction of these men upon testimony like that of Harry L. Gilmer, and my indignation has carried me away from time to time. That is my only excuse. I am now exhausted. I can do no more. I have not mentioned one-third of the points I could have made, and which I wrote down as I heard the testimony. But I will not weary you any more. I will yield this place to Mr. Ingham, who will again try to catch you by telling you of gigantic conspiracies and all that sort of stuff. Do not allow yourselves to be deceived by declamation. Analyze the facts as I have tried to analyze them

for you. They say they want your reason and not your passions. Remember that when they come to arouse your passions and want to lull to sleep your reasoning powers. I will have to leave it to my associates to make any other points which can be made in this defense. Indeed, I have never in my life heard of a case which had more vulnerable points than the case of the State. The prosecution, as I have told you, can only have one theory. They want to make you believe that Schnaubelt threw the bomb, and that Spies and Fischer assisted in doing so, and that the others were in conspiracy with them. If you do not believe that theory, you are not at liberty to speculate upon some other theory which makes these defendants guilty. Either you believe this testimony of Gilmer or you do not believe it; and, accordingly, either you have to convict these men or acquit them. You cannot now speculate that there is another principal who consummated the crime, and that all these men were accessories. That is not the theory upon which the State has based its case and wants you to believe. Unless Schnaubelt is the principal and the others are his accessories, you must acquit these men. Do not, when you retire into the jury room after all the arguments have been made, if any one of you has a reasonable doubt of the guilt of the defendants, allow yourselves to be starved into an agreement. Do not compromise, but let the man who has the courage to acquit these men under the evidence sit there until doomsday so that these defendants shall be acquitted.

MR. INGHAM FOR THE PEOPLE.

*Mr. Ingham.* Gentlemen of the jury: There are verdicts which make history. Your verdict in this case will make history. It is of great importance—greater than any of us can begin to appreciate—that your verdict be right. We live in Chicago, the metropolis of the great Northwest, the very center of the highest and best civilization of the earth. This is the 13th day of August, in the year of grace 1886, the afternoon of the nineteenth century; an age above every other noted for its humanity and for its peace; and yet, here and

now, we are investigating an offense as atrocious and as uncalled for as any which ever disgraced the annals of our race. Eight men stand here charged with murder. That alone makes of this a great cause. Seven men were killed and sixty more were wounded. That alone makes of this a great cause. But great as is the interest of these defendants in the result, great as has been the suffering of their victims, these pale into insignificance in view of the real issue upon which you are to pass.

Mathias J. Degan, at 10 o'clock on the night of the 4th of May, marched out of the Desplaines street station full of life and hope. Today he is in his grave. Why? He never harmed even so much as a hair of the head of any one of these eight men, or any one of their associates. They did not know him; between him and them there could not possibly have been any ill will. Mathias J. Degan lies in his grave today because on that night, big with fate, he stood for law. The bomb which struck him to his death was aimed at the law of the State of Illinois, and so it happens that in attempting to punish these men for their offense the law of this State attempts to vindicate itself, and so it is that the great question which you are to answer by your verdict is whether the law of the State of Illinois is strong enough to protect itself, or whether it must be trampled to the ground at the dictate of half a dozen men, only one of whom was born on our shores, and, so far as we know, not one of the others is a citizen here.

Gentlemen, I think I exaggerate nothing when I say to you that never since the jury system was instituted, hundreds and hundreds of years ago, has there been elevated and placed upon the shoulders of any twelve men the responsibility that rests upon you today. For, if I appreciate this case correctly, if I am not mistaken in the issues which are involved here—the very question itself is whether organized government among men shall perish from the face of the earth; whether the day of civilization shall go down into the night of barbarism; whether the wheels of history shall be rolled back, and all that has been gained by thousands of years of progress be

lost. What is the law? The law is a practical science, not a theoretical one. It is made because it is necessary; it is made because there exists in every community a class, larger or smaller, known as the criminal class. The criminal law and criminal courts exist for the purpose of the protection of the order-loving, peace-abiding, honest citizens against thieves and murderers. There are in every community, there always have been, and it may be that there always will be, a class of men who are criminals from instinct—not the majority, but a small minority—to protect society against whom criminal courts are instituted. Men sometimes have a curious idea about the criminal law. They have an idea that its object is the protection of thieves and murderers. They are mistaken. The object of the law is the punishment of the guilty, and, at the same time, it has certain principles which are established for the purpose of protecting the innocent.

For instance, you have heard in this case, and you will hear more before you are through with it, about the doctrine of reasonable doubt. Now, what does that mean? It does not mean that the law contemplates that any man who is guilty shall escape punishment. It does not mean that the law clothes a man with a sort of mantle which shall protect him from justice even if he is guilty. It simply means this: The object of the law is the punishment of the guilty, not of the innocent, and hence the law provides that no man shall be punished unless he is proved guilty. And if jurors have a reasonable doubt of the guilt of a man he is not proved guilty. It simply means this, nothing more and nothing less—that no jury shall convict any man until they feel sure of his guilt. One authority was read to the effect that jurors are not at liberty to doubt, as jurors, what they would believe out of the jury box; that they do not lose their judgment when they come into the jury box. Our courts, both civil and criminal, are constituted of two parts: the judge, who passes upon questions of law; the jury, which passes upon questions of fact. Why is it that twelve men are brought in to pass upon questions of fact instead of the judge or judges upon the bench?

Simply because the theory of the law is that twelve men taken from different vocations of life, twelve men of practical affairs, not theorists, but men acquainted with the practical, everyday affairs of life, can pass better upon all questions of fact than men who spend their lives in the practice of any specialty. You are brought here because you are men of affairs, acquainted with the everyday business of life as you see it, and if your judgment is satisfied of the guilt of these men that ends the question of reasonable doubt.

Mr. Zeisler said that if in the evidence there was any one thing on which you had a reasonable doubt, it is your duty to acquit. I know it is common for lawyers and others to talk about the links in the chain of evidence. It is always dangerous to compare mental operations with physical facts. It is not really a "chain of evidence." If a chain breaks in one of its links, the whole chain goes. That is not true of the strength of the proof in any case. It is represented better by a cable than by a chain of evidence. Some of you have seen suspension bridges. How are they built? First, the engineers throw from one tower to the other across the river a single wire, so small that when you look at it in the air it seems to be only the thread of a spider's web. Then another and another are thrown across, until finally they are bound up into mighty cables; and those single wires bound together hold high between heaven and earth the throbbing traffic of a great metropolis. That illustrates proof in any case before a jury. First, one strand, then another and another and another, until finally they are bound together, and if the strength of the whole is sufficient to sustain the theory of the case that side of it is established.

Now, it would be just as reasonable, just as sensible, for some engineer to go to the Suspension Bridge and say: "I can prove that the bridge cannot hold its weight," and take one wire and break it, and then another and break it, until the whole cable was destroyed, as for any man in any case, the proof of which depends upon circumstances innumerable, upon the testimony of witnesses innumerable, to say if you

can make an attack on this or that witness, or that fact or this fact, the whole case is swept away. The case is to be decided upon all the evidence and upon all the facts, upon everything in it taken together; and the question is, What does the whole prove, and not what does any one part of it prove.

The theory of our case is simply this: In the city of Chicago, in this County of Cook, there had existed for two or more years an organized conspiracy to break down the laws of the State of Illinois—to bring about by force what these defendants call a social revolution. Our theory of the case is that men connected with that conspiracy, on the night of the 4th of May, threw the bomb which destroyed the lives of several officers; and for that reason every man in that conspiracy, under the laws of this State, is guilty of murder. The Grand Jury, instead of indicting 300 or 400 men, as they might have done under the law, saw fit to pick out those who, in their opinion, were the leaders of this conspiracy, and placed them before you to be tried for the highest crime.

Whenever men combine to do an unlawful act and murder results, all are guilty of murder. The defense claimed that in order to convict the defendants it should be shown they actually conspired to throw that particular bomb. What, I ask, are the facts in this case? Was there a conspiracy to which these defendants were parties looking to the overthrow of the laws of this State by violence? Was the bomb thrown on the night of May 4 thrown as the result of that conspiracy? If these two facts are established these men under the law are guilty of murder. The law of the State of Illinois is strong enough to sustain itself, and the only other question is whether juries will hesitate to enforce that law.

A great deal has been said to you about Socialism and Anarchism. Mr. Zeisler undertook to define to you from Webster the meaning of the word Socialism. As I understand the doctrines of Socialists, the genuine Socialists, they are that men are not governed enough—that government is not strong enough now; that it should undertake to interfere with the minute relations of life, that it should go so far as to say

what men should eat and drink and what clothes they shall wear. Now the Socialists, as I understand it, differ widely in their ideas. I know that any socialistic theory of government makes a strong government a government which interferes more with the rights of citizens than any other government which now exists on earth. Out of the socialistic doctrines, from the ranks of the Socialists, has grown an entirely different class, who are Anarchists, or men who believe that there should be no government at all, but that every man should be privileged to do as he pleases. I know this from the evidence in this case. The leader of the Anarchists in America is John Most, of New York, and these men here are his disciples. I know further, as a fact of history, that in 1880, at the Socialist convention in Switzerland, the congress of the Socialists of the world, John Most was expelled for teaching the doctrines these men advocate here. I know that if the great Socialist leaders should see these men they would spit upon them as bastards if they claimed to be Socialists. They are not; they are Anarchists. Just as the turkey buzzard spews its vomit on the fair fields, so Europe spewed John Most on America; and just as that vomit festers in the sun, so John Most, the moment he landed on our shores, began to propagate his doctrines. What are the doctrines that these men have preached since that time? In order that there may be no mistake about the theory and purpose of these men I desire to read from articles in the *Alarm* and *Arbeiter-Zeitung*, written by themselves and for which they are responsible.

(*Mr. Ingham* read a number of extracts from those papers advocating a social revolution in this country.) This government has been in existence over one hundred years. It is the crown and glory of all governments, because the majority rules. Think of it! Two years ago there was an election in this country. A great party had been in power for twenty-four years. It had behind it all the memories and associations of the war. It had in its control the army of the United States. It had in its control a vast army of office-holders. When that election was held in the State of New

York Mr. Cleveland received a majority of 900 votes. Did any man in these United States even so much as dream of attempting to prevent the change of the government from one great party to another? The dictates of every man's heart were that a majority of one was as good as a million, and the change was made. Now think of it! Here are Spies and Parsons publicly proclaiming to the people of Chicago: "We believe in a system of government in which you do not believe; in a system of society in which you do not believe. We know the country is against us; we know the majority is against us. We know the majority cannot be overcome; therefore we will arm ourselves and terrify the majority."

If these men believe in the doctrine that there should be no right of property, they have a right to their opinion. There is no law in the United States to prevent them from going to live among the Hottentots of Africa or the Fiji Islanders; but when they say they not only believe in it, but that they will force it down the throats of other people, and will blow up with dynamite any man who claims property, then it must be stopped. This doctrine is no new thing; it is almost as old as the world. It is the doctrine which Captain Kidd put into practice when he sailed under the black flag, which these men have carried through the streets of Chicago. It is the doctrine of the highway robber, of the pirate of the high seas, of the bandits of Sicily and Italy.

The *Alarm*, *Verbote* and *Arbeiter-Zeitung* were full, from the first number to the last, of revolutionary, inflammatory articles, declarations that the Anarchists would arm themselves, and threats to force their doctrines down the throats of American citizens, even if blood had to be spilled. What were these defendants doing while their organs were uttering these wild and bloodthirsty threats? Spies, Schwab, Parsons and Fielden not only preached the doctrine of social revolution by dynamite in Chicago, but all over the country. They constituted a propaganda committee. Spies went to Grand Rapids to address the Knights of Labor during the eight-hour agitation. In his speech he said it would be impossible to en-



force the eight-hour system, and urged them to prepare for a revolution by force. What did these men expect would be the result of their anarchical agitation? They expected that when the time came and the first bomb was thrown the militia would run away and the police would be cowed and retire; but they were mistaken. What was that time to be? The eight-hour movement was attracting great attention.

I believe in shortening the hours of labor. I think that the working day will eventually be six hours; the reduction will come naturally by the logic of events, by invention increasing the productive powers of each individual. I am in sympathy with the eight-hour movement. The great mass of the people in Chicago were in sympathy with it. It would have been a success here if the bomb had not been thrown. That killed it, and when that bomb killed it it accomplished just what these men wanted. The moment the eight-hour movement succeeded their power would end among the workingmen, and they must do something to keep it. At that time thousands of men were out of employment. Factories were stopped and workshops shut up. Numbers were on strike; some were excited, some drinking, and in that condition in which these defendants thought they could easily be influenced. Spies wrote editorials in the *Arbeiter-Zeitung* at this crisis, in which he declared it was "pitiful and disgusting; more than that, it was treacherous, to warn the strikers against energetic, uncompromising measures. Everything depends on quick and immediate action." Spies wrote that lead and powder were the employers' cures for dissatisfied workmen, and declared that a single dynamite bomb would annihilate the police force of the city.

Have you ever read any of the writings of the Communists of France, the men who substituted a prostitute for the image of the Virgin Mary and made the streets of Paris run with blood? These defendants have the same literary style. A great deal has been said about Spies not writing the word "revenge" in the English circular. It appeared at the head of the German revenge circular. The words "arm your-

selves" were in his hand writing. Spies preached "annihilation to the beasts in human form who call themselves your masters."

Here in this city of Chicago, composed of law-abiding citizens, there are scattered all over by different names, controlled by different men, organizations having armed sections, armed for a common purpose. That "Y" appeared in the *Arbeiter-Zeitung*, and in response seventy or eighty men met that night in Zepf's Hall, from all parts of the city. Met for what? You have heard the story. Fischer, Spies' lieutenant, was there; Engel was there; the maker of and adviser about bombs, Lingg, was there. That meeting lasted for an hour or two. What happened? Engel proposed a plan, and Fischer spoke. The plan was that the armed sections should be prepared the next night to do their part of the work. What was their part of the work? That they should station themselves at the outskirts of the city, the surrounding parts, in the neighborhood of the police stations, armed with bombs, and that, when they received notice, they should attack and destroy the police stations, shoot down the officers should they attempt to go to the center of the city, and be ready to join in the general work of revolution and incendiarism. It was not agreed at that meeting that they should go to the Haymarket. These groups were to be at their respective stations. Where was the weakness of the scheme? If those men had had a leader with authority to say, "You go there and you there, and you there, and do your work at a cent an hour," where would this city have been? It was further resolved that each group should take care of its part of the work itself. That meeting of the armed groups from all parts of the city provided a plan which would have annihilated in half an hour that night the entire police force of Chicago.

What about the Haymarket? Somebody proposed there should be a signal—I believe it was Fischer, because Fischer was the go-between of Spies and the armed groups. I think Spies' testimony itself will prove that the word "Ruhe" was

proposed. Now, that word has a great deal of significance. It means peace. What more significant word could these conspirators have suggested? Peace! Innocent, beautiful word! When that word appeared in the *Arbeiter Zeitung* it meant, as Lingg said to Seliger, that the time for the social revolution had come. And it was arranged that the moment it came, other cities of the Union should be notified in the same way. That word "Ruhe" exists. There has not been a word of denial as to that fact; it was published in the *Arbeiter Zeitung*, and it exists in the handwriting of the leader of these men, and following the publication of that word came the bomb and the violent deaths. But we are told that when Spies told the reporter those men were arming, that when he urged them to arm, it was all braggadocio. It is in evidence and uncontradicted that about a year ago the defendant Engel had a machine made which he could have no other purpose for than the fusing of metal. There was no reason in the world why he should wish to melt lead, iron, or zinc; and I want to call attention to the fact that the book of Herr Most, which was introduced in evidence, describes minutely the making of poisons, nitroglycerine, nitrogelatine, dynamite, fulminating mercury, and other explosives. It describes the making of only three kinds of bombs, the gas pipe, iron and zinc bomb. There is not a word about lead bombs. Lingg, at the time that contrivance was made for Engel, was not here. Engel told the police officers that he believed the thing was made for the manufacture of bombs, because a man at a meeting of Socialists told him they wanted to make bombs at his house. He knew that it looked suspicious, or he would not have tried to explain or excuse its presence there. Before Lingg came here, so far as we know, the Socialists had no method of making bombs except from zinc or iron. I believe the contrivance was devised for the manufacture of iron bombs as described in Herr Most's book. Now, I wish to call attention to a significant fact in the testimony of Spies. He said he only had four dynamite bombs in his office; that two or three years ago some man whom he did not know, but who claimed to have come from Cleveland,

came to his office, asked if his name was Spies, and if he wanted to see some of the bombs they were making, left two bombs and then went to New Zealand. If that story were true what does it show? No bomb similar to those was ever made for any lawful purpose. There is not a lawful use known to civilized men to which that instrument could be put. It is unknown to the laws of the world. Civilized humanity would not permit it upon the battlefield. It is unknown to the sciences and arts. It can only be used by the revolutionists, and by nobody else. So here was a man, who must have been a revolutionist from another State, who came to Spies the moment he set his foot in Chicago, left with him bombs, and goes on his way to some other place.

There is another significant fact in the statement of Spies. He tells you that a year before the reporter was in his office some man left two Czar bombs, of which this (holding a bomb before the jury) is one, and left them for him to determine whether or not they were of good construction. It is in evidence that this bomb is of composite metal. Spies had discovered that bombs of composite metal were better than the ordinary bombs. More than that, when Spies took the stand I asked him if he received a letter from John Most. That letter has a great bearing on this case, because this man insinuated that the dynamite found in his closet was put there by the officers of the law to make evidence against him. He admitted he received that letter in which Most said: "Dear Spies:—Are you sure that the letter from the Hocking Valley was not written by a detective?" This evidently referred to something that had been in Spies' paper. Most said further: "I am in a position to furnish medicine, and the genuine article at that." This letter means that as long ago as the time of the Hocking Valley troubles, in which Spies and Most had no more interest than you and I, these men were ready to tempt the miners to begin a war of horrible destruction. It shows that Most and Spies were cheek by jowl. It shows that they were engaged in a common purpose, and that when Herr Most advised men to

make poisoned daggers to strike their employers to the heart, or poisoned cakes with which to feed capitalists and policemen, he found in Spies an associate who was equal to him in devilish and atrocious ingenuity.

That is not all. When Spies took this stand and swore that he had nothing to do with dynamite, he swore to a deliberate lie. Spies told Wilkinson, the reporter, that they not only bought dynamite, but that they manufactured it, and that the dynamite they made was better and stronger than the commercial article. Can there be any doubt that the talk of these men about a social revolution was not braggadocio, but that they actually meant every word they uttered; that they not only believed in the right of men to go to warehouses and take whatever they found, and to force that right down the owner's throat with daggers or dynamite, but intended to put their diabolical scheme into execution?

Everything shows that Spies himself, in the office of the *Arbeiter Zeitung*, was the center of the whole organization. It is in evidence that Lingg came to this country about nine months ago. He also believes that the men who have lived in the United States for twenty, thirty, forty or fifty years, who have struggled and pinched and saved until they have accumulated a competence for themselves and families, should divide what they possess with the Socialists or be blown to smithereens with dynamite. Lingg joined this organization and went to board with Seliger, and he was not there two weeks before he began making bombs. Dynamite was found in his room. It is in evidence that two months before the Haymarket meeting \$10 was raised at a dance, and it was decided to use the money in experiments with dynamite, and the money was given to Lingg to make those experiments. Lingg from time to time bought dynamite and manufactured bombs. Where were the bombs? Under one sidewalk in the neighborhood of Wicker Park a citizen stumbled on a number wrapped up in cloth. Numbers of others were found in different parts of the city. How many there are now under the sidewalks and in cellars, or scattered on the

prairie, hidden under the earth, no man knows. But we do know that on that night, scattered around the city, were fifty or sixty bombs ready for use.

Now we come down to the Haymarket. Here is the great disturbance of workmen of which I have spoken. Here are the men with the ammunition about which they have spoken, and for which they have been preparing. A meeting is to be called. It was expected that at that meeting there would be 25,000 workmen. Mr. Fischer wrote the circular calling the meeting. In this circular were the words, "Workmen, arm yourselves and appear in full force." Spies takes for himself great credit for having the words stricken out. He thought their insertion would keep the workmen away from the meeting. They wanted 25,000 present. They wanted a meeting with which the police would interfere, so that a pretext might be given for throwing bombs. They wanted a meeting of armed men, or Fischer would not have put those words in the circular. He was the member present at the meeting of the armed groups—he knew what was desired and inserted those words, which show for what object the meeting was really called. But, no! Spies was to speak at that meeting. Spies has more brains than Fischer. He saw that if those words appeared the laboring men—possibly meaning the best portion of the laboring men of the city—would stay at home, and so he had the words stricken out and the meeting was called. Gentlemen, I can tell you the object of the call of that meeting. These men thought there would be a gathering of 25,000 workmen; the men would move around the Haymarket; there would be excitement and disturbance; the police would interfere; a few of them could be present with bombs, and when they were thrown and the damage and mischief done it could be charged up to the Knights of Labor and the trades unions. That was what they expected. The moment it was done, and the unions committed to that kind of warfare, they could march around the city and claim to be the leaders; and if it failed the failure could be charged to the Knights of Labor and other trades organizations. There is

another significant fact. On that night there was a meeting of all the American group at the *Arbeiter Zeitung* office. So far as we know no meeting of that group was ever before held at that office; their meeting place is Zepf's Hall. At that meeting were Schwab, who did not belong to the American Group, Parsons, Fielden and others. The only man who went to the Haymarket was Spies himself; and what did he find when he got there? The 25,000 laboring men did not materialize; they were not there. There was no one there except the body of Socialists themselves. And so they marched up and down the sides of the Haymarket, waiting for a meeting or for the police to interfere. The meeting did not materialize and the police did not come. Finally Spies looks over the ground. He goes up Desplaines street to the wagon beyond the alley, and there proposes to call the meeting to order. There is another significant fact in their evidence.

Dr. Taylor took the stand. He was a member of the American Group. He swore that, although he got to the Haymarket at 7 o'clock that night, he went directly to the lamp post near the alley, for it was there that the meeting was to be called. Is he a liar? He stood there until 9 o'clock, when the meeting was called. If Dr. Taylor told the truth he knew where the meeting was to be called. Why was it called there? Waller proposed that it be held at Market Square, on the South Side. Who objected? Fischer, and Fischer is Spies' lieutenant. He said: "No; Market Square will not do; it is a mouse trap." And so they went to Haymarket Square, although never before had a meeting of Socialists been held there. Why did they go there? Because Spies, in looking over the ground, had seen there was a place where a man could plant himself in the alley and throw the bomb and no one would know from whence it came. The meeting was called to order and they speak for awhile. The Mayor appears on the scene. He lights his cigar several times. He is seen. He tells you the moment his face was seen the temper of the speeches suddenly changed. He stays there awhile. He goes back to the station. He tells Bonfield that he is satisfied they do not contemplate any outbreak,

and advises them to let the police stationed round the different parts of the city go home. Spies talks and the police do not come. Parsons talks and the police do not come. Parsons grows more violent and incendiary, and still they do not come. Finally Fielden talks, and from the time he begins until the police get there his speech is powerfully incendiary and inflammatory, and was made for the purpose of exciting and inflaming the people. We are told it was a peaceable meeting; that the police had no right to interfere; that nothing was done to justify their interference. Why, the speech of Fielden, standing by itself, though not a bomb had been thrown or a single person injured, would be sufficient to convict him of misdemeanor, and the police had a right to interfere and stop it. I know we Americans have curious ideas about the right of free speech. We have the right to say almost anything, but no man in America has the right to advise another man to commit a crime or solicit him to commit a crime. The speech of Spies was not only incendiary, he actually advised those who listened to commit breaches of the peace.

*August 13.*

*Mr. Ingham.* Fielden's speech at the Haymarket was of itself an offense against the law of the State. We Americans have strange ideas about the right of free speech. The Constitution guarantees to the people the right to meet and petition. It does not guarantee the right to the people of the United States to advise other people to murder or to advise other people to commit crimes. There is nothing in the written code of Illinois bearing upon this question, but in Illinois we have in force the common law, which comes down to us from the common law of England. Under that common law there is a provision which has been recognized by our Supreme Court, providing a punishment for every man who incites others to commit crimes of a certain character.

Parsons, Spies and Schwab could have been arrested and punished for a misdemeanor under the Illinois law for the article published in the *Arbeiter Zeitung*, and Fielden for



his speech at the Haymarket. When Fielden, in the presence of the crowd, said the war had been declared, and that they must arm themselves to resist the authorities, when he knew nothing had taken place, he was making a seditious address, and on that ground alone he could have been arrested and punished, and the police had a right to interfere and prevent his speaking further.

Mr. Zeisler had contended that if these men had been guilty of attempting to bring about a social revolution by force the fact was known to the Mayor and State's Attorney; and if the defendants were guilty of murder the Mayor and State's Attorney were equally guilty for not preventing it. What had that to do with the case if it were true? It may be that the Mayor of this city thought that under the law he had no right to interfere. It may be that if he understood the law correctly he still thought that if he should interfere, so long as these men merely published their articles, or merely delivered their speeches in crowds, the public sentiment of the community would not sustain him, and a conviction would be impossible. It may be, he thought, just as the reporter did who talked with Spies, that the whole thing was merely talk that amounted to nothing, and that if left alone, like a flash of powder, it would have gone up in the air and that would be the end of it. No matter what he thought of it, the treatment that Herr Most got in London shows that the only salvation of any community is to enforce the letter of the law as it is written, without any reference to public sentiment, or any reference to whether the public will approve it or not; to enforce it without any sentimentality in order that bloodshed may be avoided. Herr Most, for the publication of that article, was convicted and found it healthy to leave the climate of England and no English policeman has been blown up with dynamite. He came to this country, and these men have disseminated his doctrines. The officers of the law who have been blown into eternity were American officers right in the city where you live. If the law has not been enforced hitherto it is high time that we begin its en-

forcement now. There can be no question in the mind of any man that the Haymarket affair was the result of an organized conspiracy brought about for that purpose. First, Spies spoke, and the police did not come. Then Parsons spoke, and the police did not come. Near the end of his speech Parsons grew more incendiary and inflammatory; but still the police did not come. Finally Fielden took the stand, and from the time he started until he concluded every sentence he uttered was a sentence seditious in its character, and which under the decision of the Supreme Court of this State, was alone sufficient to convict him of misdemeanor. The trap had been laid; Spies laid it; Schwab laid it; Parsons laid it; Fischer laid it; Lingg laid it; Engel laid it to bring up the police force of the city of Chicago, and it was baited by Spies and Parsons and Fielden, and when the bait grew strong enough the police did come. The moment they came up, the moment they took position opposite to the alley, and when the bomb could be thrown with any certainty, the bomb came.

Mr. Spies tells you that he was in the habit of carrying a revolver; that he had carried one all his life; that he thought it was a good thing with which to protect himself, and that, very strangely, on that night before going to the Haymarket, he went to his friend, ex-Alderman Stauber, a well-known Socialist of this city, and left his revolver with him. Spies was the only man at the Haymarket in the early evening. He knew that in all probability if bombs were thrown he would be arrested, and he left his revolver, so that when arrested it could not be said he had any deadly weapon in his possession. He was covering his tracks. From the time he issued his Revenge circular; from the time he had succeeded, as he supposed, in inflaming the populace of this city, he was covering his tracks. And if his story about "Ruhe" was true, and if Rau went to any one and told them to stop the preparations, why not put Rau on the stand and let him testify about it. Spies' life was at stake, but they did not dare to put him on the stand to confirm that story. The story is

a lie; Spies knows it. If he did not want the armed groups to come to the meeting for fear there would be trouble, if he wanted no trouble on account of the word "Ruhe" he could have gone to Ebersold, chief of police, and said: "I understand there is danger of bombs tonight, and the police should not be massed together; they should go in a way there will be no danger from bombs, and I can put you on the track of the men who are ready to throw them." Did Mr. Spies do it? The meeting came; the crowd did not. The Haymarket was there, with little groups of people scattered around. Spies picks out the place for the meeting, and, although he knew that word "Ruhe" had been published, and that the armed groups were scattered over the city; and although he knew that Rau, in an hour or two, could not notify every man, he called the meeting to order in the very place where the police were to be massed and the work of destruction begin. He told them that bombs of a composite material were best, and on that fatal night the bomb was thrown, seven men killed, and sixty wounded, and today in the public hospital of this county, while these men sit here decked with flowers, there is one man with eighteen drainage tubes in his single body. Was he right when he said bombs of composite material are best?

Gilmer and Thompson told the truth and if they were not in the case at all it is abundantly made out by other proof. There is no doubt that Schwab did go to the Haymarket, and that he saw Spies there and walked about with him before he went to Deering, and that Thompson saw him there at the time he said he did. Schnaubelt had a full beard, but on the day after the Haymarket meeting he suddenly lost it. These conspirators had the idea that the only man that could be held responsible was the man that actually threw the bomb; Schnaubelt was the only one who considered himself in danger, and he changed his appearance.

An attack was made upon Gilmer, and witnesses were brought to asperse his character who were busy putting up their cent per cent shanties while he was baring his breast

to the bullets of the enemies of his country, under the glorious Stars and Stripes. Fielden and Parsons often said that they would like to take the black flag and march up and down the avenues of the city and strike terror to the hearts of the capitalists. Why did they choose the black flag? The flag which represents their principles is the flag of the pirate, which now and always meant, "no quarter;" a flag that means, for men, death; for childhood, mutilation; for women, rape. That was the flag under which the defendants marched. Between them and Gilmer I would not hesitate for an instant. But when the counsel for the defendants went so far as to show that in that alley there stood two men, both of them armed with pipes, and one of them lighted the pipe of the other, and asked the jury to believe that Gilmer did not know a pipe from a bomb, they by that very act acknowledged that the testimony of Gilmer carried with it some weight. There is one other thing. Does it seem ridiculous that one man should light and another throw the bombs. You listen to the testimony of Seliger. He said that while he and Lingg were walking up and down ready to annihilate the police force when the patrol wagon came, Lingg had the bomb and he had the light. Just what was happening on the north side happened on the south side. Suppose it were shown beyond all question that the bomb came thirty-five feet south of the alley, the fact still remains that there was a conspiracy, that these men were parties to it, and the bomb was thrown as part of that conspiracy. That makes these men guilty of conspiracy to do an unlawful act, and carrying it into effect, and all are guilty of murder.

Now, so far as the case is concerned, I am through. The responsibility, even the minor responsibility, such as I bear, is a very great one. I believe in this case, as I have told you before, that your verdict will be one of significance greater and wider in its scope than any which has ever preceded it. When Sumter was fired on; when the flag of the United States was insulted; when an attempt was made to disrupt the government, it was an attempt merely to change the form

of government. When the bomb was thrown it was the opening shot of a war which should destroy all government and destroy all law, leave men free to prey upon others as they saw fit, and leave nothing to guide but the strong arm. I believe for myself that humanity—not merely our own country, not merely we of America, but that humanity the wide world over—has no hope, no safety, save under the law. The law is the very sheet anchor, is the hope, the palladium of liberty and peace of all people. But the law which does not punish murder breathes death. Jurors who, from merciful instinct, hesitate to convict the guilty, are in reality as merciless as the grave, for they throw their protection around deeds of midnight robbery and assassination which people graves and fill the land with deeds of blood. Innocent blood from the days of Abel to now cries to heaven for vengeance. Innocent blood contaminates the ground on which it falls. And now, if you believe these men guilty, if you are satisfied beyond a reasonable doubt, as you cannot help but be, that these men were parties to a conspiracy unlawful in design; that through that conspiracy human life was taken; that they are murderers under the law, see to it that the majesty of the law of the State of Illinois is vindicated and its penalties enforced. These are its demands upon you, and these are not only the demands of the people of the State of Illinois, but of humanity itself, for humanity with all its fears, with all its hope for future years, is hanging breathless on your verdict.

Now, who made that bomb. You have heard the evidence in this case, which has not been disputed. So far I have not alluded to a single fact about which there can be dispute. It is uncontradicted that for four months Lingg had been making bombs. On the morning of May 4 he told Seliger that they must work hard that day. He left the house and was gone all the morning. When he returned because Seliger had filled but one bomb and then laid down on the bed and slept, Lingg upbraided, found fault with him and told him that this thing must be hurried, and that afternoon the work went on. The evidence showed that men came to his house,

and the work went on during the whole afternoon. The witness Lehmann told you that he went there that day to buy a revolver from Lingg; that they dickered about it and that he went away without buying it, and then went back a second time to renew the negotiations; that during that second visit Lingg gave him a loaded bomb, gave him dynamite, gave him a fuse and gave him a fulminating cap. Lingg was distributing bombs all that day to different parties through the city. You will remember that Spies told the reporter that he had discovered—although Most says not a word about it in his book—that bombs of mixed composition were by far the best.

The Czar bomb was composed of nearly the same material that the Lingg bombs were. The only difference was in the size of the bolts. The bolts in the Czar bomb were not large enough to fasten a three-inch bomb, but with the difference arising from this fact the bombs were identical in size. Two of the most eminent chemists of Chicago, Professor Haines and Professor Delafontaine, examined the bombs, and told you that the bombs were not made of lead alone; they were not made of solder alone. There was not in the city of Chicago any article of commerce of the same composition as the bombs. Everything found in any one of these bombs was found in Louis Lingg's trunk in a different shape. The attorneys for the State did not know but it might be claimed in argument that inasmuch as the ordinary solder of commerce contained tin, some one other than Lingg, might have gone to work and gathered up old pieces of gas pipe or water pipe and from these the Haymarket bomb could have been made. In order to see whether that was possible or not, Professor Delafontaine searched from one place to another until he could get hold of a piece of lead pipe covered with solder. He remelted and analyzed it, and the amount of tin contained in that mixture was about seven-tenths of 1 per cent—much less than in any one of these bombs. The mere fact that the nut found in the body of the Socialist corresponded with the nuts in the bombs made by

Lingg did not prove conclusively that he made the bomb that was thrown in the Haymarket, but it was a circumstance which, taken in connection with the fact that the bombs made by Lingg were identical in size and that the ingredients were identical, amounted almost to a demonstration that he made that particular bomb. In addition to that, take into consideration the fact that Lingg was working all that day, that he wanted bombs that could be used that night; take into consideration that men were coming and going from his house all day long, and the further fact that one of their own gang, the saloonkeeper Neff, had sworn that after the deed was done one of them said to Lingg: "You are responsible for this," and that Lingg replied, "Now see what thanks I get; I am being scolded for it." When you take all these facts into consideration—the fact that Lingg manufactured the bombs out of a variety of metals containing certain constituents; that those identical constituents were found in the bodies of the officers; that he worked all day; that that night one of his own gang charged him with being responsible for the Haymarket bomb; and he said on his way home, "That is all the thanks I get for it;" take all these facts in consideration, and can there be any possible question in the mind of any reasonable man that Lingg himself made the bomb that killed Officer Degan?

What is the answer to all this? That the bomb was not thrown from the alley, but from thirty-five feet south of the alley. What if they have proven that? Could there be a doubt that the man who threw the bomb, whether he stood in the alley or thirty-five feet south of the alley, was one of the Anarchists associated with these men? If you were at your homes and read the story which has been told in this case—the appeals for years to annihilate the police force, the actions of Spies and others to exasperate the workingmen, the meetings at Greif's Hall and at Emma street, the printing of the circular by Fischer containing the direct call to arms, the manufacture of bombs by Lingg, the hasty manufacture of them on that day, the distribution of them

through the city, and the throwing of the bomb at the time the police came to the alley—at the very sort of place pointed out on their diagrams—can there be a reasonable doubt in the mind of any man who has not lost his senses, that bomb was thrown by one of the conspirators? Gentlemen, whenever that question is settled in your minds that ends the case. We have proven the conspiracy; it has not been denied. We have proven that Degan died from the effects of that bomb; it has not been denied. We have proven, by circumstances making it as clear as daylight, that that bomb was thrown by one of the Anarchists; and when we have done that we have proven this case; and when we have done that we have sealed the fate of every one of these men, if jurors of this county do their duty under the law as it is written and declared. I said at the opening of this case that the law is strong enough to sustain itself. The only question is, have jurors strength enough to enforce it?

Now, gentlemen of the jury, so far, in what I have said to you in the course of my argument, I have not referred to a single disputed fact. The whole of it nearly is made up from declarations of these men, admitted by them, and from testimony about which there can be no question, and which has not been denied by any witness in the case.

Was there a conspiracy? Mr. Spies knows. Mr. Spies was on this stand. He is a man of intelligence; he is perhaps the brainiest man of the whole crowd. He knew that in this case his life was at stake. His counsel knew it; and yet with all the weight of responsibility that was upon them, they did not dare ask him a question about that. They have not made any mistake in their management of this case. I doubt not they have had many a consultation as to what they should ask these men; and after mature deliberation they saw fit to shut the door to any entrance into that part of the case. There was a conspiracy; these men know it, and have not denied it. That bomb came



from that conspiracy; and the moment that it resulted in the death of Degan, the crime of conspiracy was merged in the crime of murder, and every one of these men made amenable to the law. These men knew about that meeting at Greif's Hall. You have heard the fish story that Spies told about the word "Ruhe." He said it came to him in the ordinary way, and that he inserted it in the "Letter Box" without knowing what it meant. Rau the advertising agent of the *Arbeiter Zeitung*, asked Spies if he knew what it meant, and he said, "No." Then Rau told him that the armed sections had held a meeting and agreed upon that word as a signal. Spies had told these men to arm the day before; he said to them in his paper, "Hercules, you have arrived at the turning point; decide now or never." He evidently knew that these men were armed, but when Rau, his lieutenant, spoke to him about "Ruhe" he suddenly said: "Oh, that won't do; let us have it stopped. Send for Fischer." I want to ask you one question. If Spies thought an improper plan had been arranged at that meeting of the armed groups; that the word "Ruhe" which came to him from some source meant something dangerous, why did he, in the first instance, send for Fischer and ask him whether it had any reference to the Haymarket? Because that man, who, during the whole of this trial, while the faces of the other defendants were wreathed in smiles, has sat white and pale, felt that he would reap the responsibility when trouble came. He sent for Fischer, and Fischer, according to the story, told him what "Ruhe" meant. Spies thought it was very foolish, and unless some one went and told these men that the notice was inserted by mistake, and that they should keep their powder dry, he would not speak that evening; and Fischer went to execute his mission, and came back in two or three hours and said it was all right. When he sent Balthasar Rau on the mission he claimed he sent him, Spies admitted that he knew what the word "Ruhe" meant.

MR. FOSTER, FOR THE PRISONERS.

*Mr. Foster.* Gentlemen of the jury: This is the forty-eighth day of the trial, and it seems to me that for more than twenty days during the introduction of the testimony and during the last three days in this argument there was on the part of counsel representing the State here a desire to tire us out to an unprecedented extent upon immaterial issues. We have not followed them, so far as our testimony in this case is concerned. Take the record and read it from beginning to end; not one syllable has been introduced on the part of the defense except what has reference to the Haymarket meeting. For the first time, then, I am compelled in the argument to go beyond what I believe to be the proper scope of the testimony and the investigation in this case. I somewhere and at some time remember to have read a legend of the fact that the grass never grew upon the grave of Captain Crawford, who was brutally murdered by the Indians in the early settlement of this country. If nature has any such sympathy with poor, distressed humanity then if a verdict is rendered upon the case, and in this case by you, which will destroy the lives of these eight men upon any theory advocated by them, or any belief advocated by them, or by the prejudices counsel would instill within your very bosoms, then, when these men's bodies are moldering in the dust, or are the food of worms, flowers will never bloom and the birds will never sing. Mr. Walker has said justice is blind. Justice is blind. Justice never sees when a man is brought to her bar whether he was born beneath the flag of William and of Bismarck or beneath the flag of Victoria and of Gladstone. It does not see whether he was born in a foreign land or born beneath the starry banner of the United States of America. It is necessary for me to argue that these men are foreigners and Germans; it is necessary for me to refer to the argu-

ment of the gentleman yesterday that they are not citizens of the United States? Our law knows no citizen when a defendant is brought to the bar of justice.

Our law is grand enough and broad enough, the principle upon which our government is founded is such that it matters not whether he be French or German or English or Italian for wherever his birth places him, all men are equal before the law. I must go out of the record, gentlemen, to discuss the suggestion made for the first time, to my great surprise, on the part of Mr. Ingham, that there was no evidence that any of the defendants were citizens of the United States. Because he referred to it I have a right to refer to it. Because he went out of the record by a reference to that fact I have a right to go beyond the limits of the record in this case in reply. I supposed they were all citizens of the United States except Lingg. I believe the testimony says that he has only been in the country about two years. The testimony says that Spies came here in his infancy. I know, as a matter of fact, outside the records, that Neebe was born in Pennsylvania, and never was a foreigner. I know Schwab has been in this country long enough to be a citizen; whether he is one or not is entirely immaterial for the purpose of this case. Fielden tells us he has been here for more than twenty years. Fischer has been in Chicago for the last ten or twelve years, and Engel for fifteen or twenty years. The statement that they are foreigners and Germans is made to wring from you a verdict founded on prejudice. Are we to establish a principle? Are we to say to King William and Prince Bismarck, Germans have no rights where the Stars and Stripes wave? Are we to say to those countries which we look upon as beneath us, so far as the control of the governments is concerned, that we have justice only for such of our inhabitants as are born upon our own soil? It is unfair, gentlemen. These men are on trial for their lives. It is not a question of dollars and cents. It is not an injustice that you can do today and take back tomorrow. When

you destroy their lives there is no appeal. I beg of you, gentlemen, to make no mistake. There is more than the lives of these eight men at stake. It is important to the State's Attorney, as an honorable man, to see that no innocent man is punished. It is the desire of the Court unquestionably to guard the rights of the accused as well as of the people. It is important to the counsel representing the defendants that they make no mistakes and leave nothing undone to present to the jury every circumstance which would be favorable to the accused. But the grave responsibility rests upon you. There is more, I say, than the lives of these eight men at stake. Grey-haired mothers must go down in sorrow to the grave; wives die in disgrace; sisters' hearts must bleed, and children yet unborn must bear the stigma which you will place upon these men if you convict them.

There was an extraordinary effort to convict the defendants, and back of Mr. Grinnell, his assistants and his ability there was a police force of 1,000, the treasury of the county, and perhaps that of the State. Outside of you twelve gentlemen, the judge upon the bench, and counsel on either side, there is not a man in Chicago who has a right to say he has an opinion founded upon the facts in this case. If these men are to be tried on general principles for advocating doctrines opposed to our ideas of propriety, there is no use for me to argue the case. Let the sheriff go and erect the scaffold; let him bring eight ropes with dangling nooses at the ends; let him pass them around the necks of these eight men; and let us stop this farce now if the verdict and conviction is to be upon prejudice and general principles. We boast of our courts of justice, of our equitable laws, but if the time has come when men are to be prejudged before the trial and convicted upon general principles, all that is grand, sacred, noble and praiseworthy in our temples of justice will be destroyed. Considering the experience of us all in relation to this Haymarket tragedy, considering the facts that we know to be true, do

you blame me for saying I am afraid of your passions, I am afraid of your prejudices?

I suppose the jurors are all members of some church and imbued with Christian principles. Men sometimes changed their religion, but that was the exception and not the rule; they sometimes changed their politics; but the general rule was that men preserved the opinions both of religion and politics they formed in their youth. The jury could not blame me, after the difficulty experienced in getting a jury, when I say I am alarmed on account of their prejudices. If they could divest themselves of this prejudice and lay aside their opinions and act according to the testimony, that was all I would ask. Was it a question of conspiracy that had been argued by the prosecution? There was no charge of conspiracy, as such, in this case. If there was a conspiracy to do an unlawful act, and as part of that act murder was committed, these defendants are guilty, providing the act was done by some of their confederates or associates. But there was another offense than conspiracy to commit murder in the indictment. That was the conspiracy, as we understand it, that the defendants and other citizens are now indicted for, and for which they will be placed on trial as soon as this case is determined. It is an open secret that all the defendants are indicted for murder; that all of them are indicted for conspiracy, and that all of them are indicted for riot, three separate indictments.

I am not going to argue the question whether they are guilty of conspiracy or not, except so far as that conspiracy has relation to the commission of the crime of murder. If they committed the crime of conspiracy, and you are convinced of it beyond a reasonable doubt that these men conspired to overthrow the legal authority of this city, to thwart the law, to bring about a social revolution, when they are placed upon trial for that charge is the time to present that fact and argue in its support. This question of Socialism or Anarchism is of no consequence unless it is

connected with the murder of Mathias J. Degan. But they have tried to bring us out in the underbrush, and assassinate us upon the strength of their theories. Suppose these men did conspire to overthrow society, that they did conspire to disobey the law and thwart it to bring about social revolution, and it stops there, then there is nothing in the case which is now under hearing. Understand my meaning, gentlemen. Do not misrepresent me in your consideration of the case. I say that the charge of conspiracy is not a charge which the defendants are called upon to resist, except it is a conspiracy to commit the offense which was committed at the Haymarket on the 4th of May. Any verdict based upon any other theory would not be worth the paper it was written upon. Our position is, and always will be, that we are trying these men for murder committed on the night of May 4, and nothing else.

I do not stand here to defend Communism; I do not stand here to defend Socialism or Anarchism, because I believe in its inception and in its principles it is wrong. Assuming then that Socialism is wrong, assuming that Communism is pernicious, assuming that Anarchy is outrageous, still I say to you, concede it all, and it brings us back to the one question, and only the one question: Are these men responsible for the murder? I do not believe, as one of the counsel for the State told you, that this is a case on which history is to be written; I do not believe that we have been occupied for forty-eight days in making history; I do not believe this is a question as to whether Anarchy is right or wrong; I do not believe that this case will determine whether or not Socialism shall continue to exist. Your verdict can have but one effect—that is to say, to pass upon the responsibility of these defendants for the murder of Mathias J. Degan. We have been rambling about the world in this investigation, and I am compelled to follow gentleman of the prosecution to a certain extent on the immaterial trail that neither started from nor arrived at the highway of truth upon which we ought to travel in this

case. They have dissected the past lives of these men. They have been tried from the cradle up to the present time upon the theory that if at any time any act was done which would throw the slightest suspicion in regard to the crime at the Haymarket it was competent testimony in this case. It is a dangerous doctrine to take the utterances of a lifetime and by showing the condition of a mind capable of committing a crime to reason therefrom that the crime was committed. The prosecution demand that the defendants should be convicted and strangled to death because they believe in the principles of Socialism and Anarchy. Unless they are convicted on facts connected with the Haymarket meeting you can never convict them legally. Upon that position we stand or fall.

What did the capitalistic press want to do with strikers? What were the utterances of the city press in regard to the labor movements. One of the principal newspapers advised the throwing of hand grenades among the strikers as the best method of settling labor disputes. I have not seen this article, but am assured that the declaration had been made. It must have been in the communication of some crank; at any rate he would give the paper the benefit of the suggestion. Now, suppose that men acted upon this suggestion of hand grenades, who would be responsible for the death and destruction which would result? The newspaper? No; the persons who threw the hand grenades; at least that would probably be the verdict of the community.

*Mr. Grinnell.* I shall have to reply to your statement in regard to what was in the newspaper. There is no proof in the case that such a suggestion was published.

*Mr. Foster.* You will have that right. I am simply using this as an illustration. Other newspapers might contain articles inciting to deeds of lawlessness and violence, and yet would it be fair to hold the editors and proprietors responsible for those crimes? Every paper in the city is protected except the *Alarm* and *Arbeiter Zeitung*. I am not

here to defend these papers, but I am here to demand that right should prevail, and honesty and fair dealing and true principles of law should destroy these men if they are to be destroyed. One newspaper urged that Gatling guns, and brave men behind them, was the only true remedy for strike troubles. My God, if the *Arbeiter Zeitung* or *Alarm* should publish sentiments like that, how the gentlemen on the other side would ring the changes upon it by the hour and by the day. But these great papers are protected. There is protection for them all, except those with which the defendants are connected. Understand, I am not arraigning the newspapers of Chicago. I have respect for them. I have read them for years and years. I delight in their independence; I delight in the ability with which they are published, and I merely call attention to the unfairness with which the prosecution regard the *Arbeiter Zeitung*. Every utterance made by the great daily newspapers is all right; every utterance made by the *Arbeiter Zeitung* and *Alarm* carries conviction in every line. That is the difference; and yet a practical comparison of the papers in a great many instances would not be unfavorable to the defendants so far as the inculcation of ideas is concerned which might lead up to crime or offenses against the law.

What if Fielden or Parsons did carry a revolver? I would not be afraid to wager a five-cent cigar that Mr. Grinnell himself carries a revolver on a dark night. I will not believe that you don't carry one. I would have you sworn, or you must tell me outside the hearing of this jury, before believing I was mistaken. Then, there were the file daggers and their grooves for prussic acid. If you are going to disregard the facts and going to take the statements of counsel and the arguments of attorneys in supplying the evidence, I want to know it, and I will stop now and not tire myself out in answering suggestions that have been made and in presenting arguments which I believe to be important, competent and legitimate. The prussic acid



was put upon this file by Frank Walker and nobody else, and that statement was not made under oath and is not legal or legitimate testimony. You are to determine this case upon the testimony given by the witnesses and not in the arguments of counsel. But the end is not yet. I remember seeing published in a number of newspapers—I think it was published in all the papers of the country—the handbill that was issued in the city of Indianapolis some time ago. What was the result? Parsons is on trial for his life, in part for publishing that which all other papers in the city of Chicago published. Not an editorial line, not a word indorsing the contents of that circular; not one word; simply inserted as a matter of news, the same as telegrams, reports of a storm or an accident, or any other news item. And now they want to hang Parsons because, forsooth, he permitted this circular to be incorporated in the columns of the *Alarm*. For God's sake, let us have a little fairness about this case.

Among other things, three tin cans were found under a sidewalk in the city. Strangle them to death in part because these three cans were found! When were they in the possession of any of the defendants? Never, so far as the testimony is concerned. When were they prepared and filled at the house of any of the defendants or any of their associates? Never, so far as the testimony is concerned. And yet they are not only introduced in evidence, their contents examined and sworn to, but you are expected to smell them; you are asked to examine them at the risk of a headache, and they want your noses near to their tops. Why? Because they were found under a sidewalk in the city of Chicago. And that is part of the testimony upon which the lives of these eight men are to be destroyed. But it is all in a lifetime; it is all part of the grand combination; it is all in the great conspiracy, because counsel tells us it is. Such evidence was never introduced in any court of justice in the civilized world without objection. It was said Herr Most described such things in his book on revolu-

tionary warfare. There is not a word of testimony that any of the defendants ever read that book. But that does not make any difference. They are Socialists—hang them. That does not make any difference. They are Communists—hang them; they are Anarchists—hang them. I always supposed that the lowest creature that possessed life was entitled to some consideration. I supposed there was not a thing in existence so low, so poor or loathsome, but had some rights; and I do not believe it now, except it be a Socialist, Communist or Anarchist. That puts them beyond the pale of civilization; it puts them beyond the protection of the law; it convicts them of itself.

The State had called attention to the fact that no defense of Lingg had been attempted. I will tell you why no such evidence was introduced. There is nothing in the case, so far as Lingg is concerned, except that he was a bomb-maker, and that he walked into Larrabee street on the 4th of May with two bombs in his pockets. That is all they have proved against Mr. Lingg, and, gentlemen, it is true. Can we be called upon to produce evidence to contradict a fact? We will not deny that Lingg made bombs. The evidence is sufficient to warrant you in believing and to warrant me in stating it. But I ask the counsel to explain where the connection between Lingg and the throwing of the bomb on the Haymarket is. The gentlemen trying this case apparently think we have the burden, and I do not know but what we have. The general rule is that the State has the burden, and it is a strong and heavy burden—the burden of producing testimony to satisfy the mind beyond a reasonable doubt of the guilt of the accused. But in this case they assume we are guilty, and we must establish our innocence not only beyond a reasonable doubt, but beyond every conjecture and conceivable doubt which would naturally rise in the minds of the jury. That is not the law; it never was the law, and never will be in any intelligent community.

I have no excuse for Mr. Lingg, and I can say to Mr. Spies and Mr. Schwab that it were better they were in some other business than that of teaching Germans who come to this country to hate and detest our institutions, and commit any infraction of the law of the land. If this country is not good enough for foreigners, then those foreigners should return to their native land. To Mr. Fielden, if he desires the overthrow of any government or the change of any laws, by force or otherwise, unless by the means recognized as proper and right, I say he had better return to the land of his birth and help to overthrow the law that has ground Ireland under the heels of oppression. And as to Mr. Parsons, I would say if he has any such desire, it is a shame that any man born under the Stars and Stripes should ever say that this country or its laws were not all, or by legal process might not be all, every man should desire.

I have no patience with men who resort to force in violation of the law. I would say to Mr. Parsons that we live under a common flag; the blood of his forefathers and of mine is embalmed in its red; the purity of the cause for which they fought is denoted by the white; the blue, the victory won, like the azure air that tips the hilltops of our woodlands or covers our Western prairies. I am not a defender of anarchy. I am not a defender of violators of the law. Let the law take its course—the law be just. Perhaps I have gone a little out of the path I should have traveled in saying this; but I want you to know, I want them to know that I am not standing here advising, counseling, abetting, or aiding any conspiracy to overthrow the laws of the land. That is my position; that is my principle; and it is not for a lawyer's fee that I would sell it, or that I would make a declaration different to my real sentiment. It is not necessary that I should. I view this case as you do. I view it as an American citizen as you are Americans. I view it as a law-abiding citizen. I think I can look over the evidence and compare it with you upon

the standpoint—no defense for anarchy, no defense for communism, no defense for socialism.

There was really nothing extraordinary in the speeches which several of the accused had made during the past six years. They simply used oratory in the same way that Republican and Democratic speakers used it. They kept asserting that a revolution was coming. Many a Democratic orator in the last campaign declared that a revolution was coming, and when Mr. Cleveland was elected the revolution had come. That, according to the line taken by the prosecution, was all right for Democratic speakers, but all wrong for Parsons and Fielden. I admit that these men had for six years marched down Michigan avenue, flying the black flag and destroying property. The black flag was not only the emblem of the pirate and death, it was the emblem of the starving poor of European countries. It should not be argued that they thought of murder because they marched under the European flag of distress, poverty, want and woe. The Socialist banners had been kept in front of the jurors, so that they should not for a moment forget their mottoes—"Down with All Law," "Every Government is a Conspiracy against the People." I am willing to admit all these things; to admit that Spies had tons of dynamite in the *Arbeiter Zeitung* building. All this was immaterial. The case must come to this proposition from which there was no mistake: Were Spies & Co. instrumental, by aiding, assisting or abetting the man who threw the bomb at the Haymarket? Any other proposition was pernicious, illegal and damnable in its consequences.

July 15.

*Mr. Foster.* I asserted on Saturday, that I did not stand before you to defend Socialism, Communism or Anarchy. I might have said we did not stand before you for the purpose of supporting any of those doctrines. I express the idea of the gentlemen with whom I am associated when I undertake to say that we do not take the position that Socialism, Communism or Anarchy is justifiable. This case,

as I argued on Saturday, is not to be tried and determined upon the argument of counsel. If I should undertake to point out certain of the defendants as being guilty, and certain others as being innocent, it would be an idle statement, and would be disregarded by you as intelligent jurors. I have already called your attention to a fact which exists in this and in every other case—that the innocence and guilt of the accused has to be determined upon the evidence legitimately presented to you. It is idle to discuss or talk about propositions that are not supported by the testimony, and it is just as idle for attorneys to assert opinions. My brother Ingham, near the conclusion of his remarks on Friday, said it was not the purpose of Mr. Grinnell to convict any man about whose guilt he had a doubt, but he attempts the conviction of these eight men because he knows they are guilty. I say, gentlemen, that declaration is unjustifiable; it is unfair, unwarranted and radically wrong. The province of counsel, in my judgment, is to refresh your memories, to recall to your attention particular points of the testimony, in order that you may not forget the relations they bear to each other, and not to make suggestions or propositions in their addresses which are not borne out by the evidence.

I do not agree with Mr. Ingham in likening the evidence in the case to a cable rather than a chain. From the foundation of our jurisprudence by the greatest judges that had ever sat upon the bench, it had always been likened to a chain. Each proposition of fact was a link in that chain, and if the State failed to establish any one of the propositions of fact necessary to constitute the crime for which they were indicted, a link of the chain was broken, and the whole fell to the ground.

As to the interviews between Spies and the reporters in January last, I am reminded of the old proverb that a barking dog never bites. After obtaining the bombs and the dynamite, which were produced in court, Spies did not hide them away until the time for their use came, as a

revolutionist would have done, but kept them there at his office for exhibition. Whether this arose from a love of notoriety or not, I do not know, but there was something in the character of the man that prompted him to act in this way. Were the articles used at the Haymarket? Were they used in the destruction of Mathias J. Degan? They knew better than that, because those articles were produced in court. Newspaper men would remember the story that was started about Leo Hartmann, the Russian Nihilist, being in town. Spies was the author of that yarn, and probably did it as much to mystify the public as to gratify a love of notoriety. There had been some strained evidence in this case. From the testimony of some of the witnesses, it would seem that Fischer's house was an arsenal containing ammunition sufficient to destroy the whole city of Chicago. But when it came to be sifted down, it amounted to nothing more than this, that under the back stairway of the house in which he lives there was found a piece of old, rusty gas-pipe three or four feet in length.

Why, it is a horrible thing! A piece of gas-pipe—think of it—three or four feet long, under an old stairway outside and disconnected with the abode of the defendant, Fischer! But yet they would have you convict him; they would have you place the noose around his neck, make a widow of his wife and orphans of his children because, forsooth, a piece of old, rusty gas-pipe was found near his habitation! This is on a par with a great deal more of the testimony. Mr. Ingham has alluded to the pale face of Spies when certain facts were brought out in evidence. Yesterday the counsel in this case and the reporters had probably walked out and exposed their countenances to the bronzing influence of the sun; but Spies had been in a dingy cell for three months where the sun of heaven never penetrated. No wonder he was pale. No wonder he was anxious. Any man of sensibility would be anxious under the charge here made against Spies; if he sat there defiant and indifferent the State's Attorney would denounce him

as a creature below the level of humanity. But everything was charged to Communism and Anarchy. On the 4th of July, when the firecrackers and cannon were booming all over the city, a report was published of an attack upon the County Hospital by an Anarchist; but investigation showed that a boy with a toy pistol was responsible for the mischief. The prosecution even went to work deliberately to manufacture testimony. Captain Schaack went upon the lake front and into vacant lots to experiment with dynamite, so that its destructiveness might be shown to the jury. There was no reason for those experiments. Any man of any reading, of any intelligence, every man of sense knew it, and yet Captain Schaack manufactured bombs. He took Louis Lingg's occupation away from him, and then he brought the splinters into court as evidence against these defendants, and they had piled them up as high as the tables almost for the purpose of horrifying the jury. That was the kind of evidence they had produced weeks and weeks after the meeting at the Haymarket, May 4, and it was all attempted for the purpose of satisfying the jury that these defendants killed Mathias J. Degan. The State must try this case on the issue, Did these defendants murder Mathias J. Degan? No other issue could be presented, and no other verdict could be entered. Statements of counsel in their argument were not evidence.

The jury should remember, that in his opening argument, Mr. Grinnell, after consultation with his witnesses, stated to them that he would show from the testimony that there was a meeting held near McCormick's, or the Black Road meeting; that that meeting was a meeting of lumber-shovers, not Socialists or Anarchists; that August Spies went out and forced himself upon the meeting for the purpose of making riot; that he did force himself upon the meeting and bloodshed was the result. He argued that the Haymarket meeting was the beginning of a proper consideration of facts which throw light on the case. It was true, perhaps, that the lumber-shovers were not Socialists

or Anarchists, but they belonged to the Central Labor Union. Spies went to that meeting as a reporter to prepare an account for the next issue of the *Arbeiter Zeitung*. Spies went there and mounted upon a car, and then howls arose that he was a Socialist, but when it appeared that he was a member of the Central Labor Union peace was restored and harmony prevailed. He did not force himself upon the meeting for the purpose of inciting riot, and thereby take the initiatory steps to bring about a revolution. Mr. Grinnell had stated that he would show that he had made an inflammatory harangue in order to incite a riot, and thereby bring about the long-looked-for revolution. Why did he not prove that an inflammatory harangue had been made? Why did he not prove it? He brought an American boy who did not understand German to prove his inflammatory utterances, and all he could tell them was what kind of a jumper Spies was. In what way did this Black Road meeting figure in the case? "Why," says Ingham, "no sooner did he get the ears of these Germans than their blood began to boil, and when the bell rang at McCormick's thousands of them ran and attacked the employes at McCormick's factory." Spies told these men that they had nothing to do with McCormick's, and he tried to call them back, and he knew nothing of what was going on at McCormick's till the firing commenced.

When the police fired, Spies was shocked; his blood boiled with indignation, and in a moment of frenzy he rushed to the *Arbeiter Zeitung* office, and wrote the historical "revenge" circular. That circular may have been unwise. Perhaps it was. Men do unwise things when they are frenzied by passion. Their reason is for the time destroyed, and they go forth to commit murder and infractions of the law. Spies might have committed an error in issuing the "revenge" circular. They say he issued it to bring about a spirit of frenzy which would bring about the revolution, which was his pet scheme, by day and night. That was the object, if you believe the statements of the



prosecution; but there is no evidence to prove it. The "revenge" circular called for no action. It called for no meeting; it designates no time or place. It is simply a declaration of outraged feeling, of frenzied passion. If the meeting on the Black Road was unlawfully attacked—and I am not going to argue whether it was or not—but if the time ever comes when an organized force, be it the police or militia, undertakes to attack law-abiding citizens, the citizens have a right to retaliate. Why, it is asked, should the workmen be urged to arm themselves? They believed—thousands of ignorant laboring men in Chicago believed—that the police had unlawfully interfered with the meeting at McCormick's. The time has not, and never will come as long as our institutions and laws are sacred, when the most humble citizens may not publicly assemble and discuss their grievances. Whenever that right is interfered with or ruthlessly assailed, whenever an assemblage is dispersed by any means whatever, citizens have a right to "arm themselves" and appear in full force.

But Spies objected to that line being in the circular. He said the recommendation was foolish, and would probably keep workmen away from the meeting; he would not speak unless that line was out. The line was taken out, and Spies spoke at the meeting. All the newspapers of the city printed that circular without the line "Arm yourselves, and appear in force." That was proof in itself that the emasculated circular was alone distributed.

With regard to the meeting at 54 West Lake street, it was absurd to think that thirty or forty men, hid away in a basement and passing resolutions, could strike at the foundations of government and social order. It reminds us of the three tailors of Tooley street posing as "We, the people of England." If those men had such an object in view, murder was not the offense they should be tried for; a jury should be impaneled to test their sanity. And the trial of two of the defendants who attended that meeting, is the writing of history to be handed down for the enlight-

enment of generations to come! Mr. Grinnell said the trial would determine whether law and order or anarchy shall rule. I say that is not the question. I say anarchy will never rule in this free and enlightened republic. The question here is the same as the question everywhere: Are these men guilty of the murder of the man whose name is set forth in the indictment? There is no escaping, no avoiding, that issue; like Banquo's ghost, it will not down.

That meeting at West Lake street simply agreed that if the police again attacked the strikers they would array themselves on the side of the strikers and help them to repel the attack. How was that to be done? By inserting the word "Ruhe" in the *Arbeiter Zeitung*, Waller testified. There was no conversation about or idea of using violence at the Haymarket the following night; there was no idea that "Ruhe" should be inserted in the *Arbeiter Zeitung* the next day. That word was to be inserted if the attack by the police occurred in the daytime, and personal communication was to inform the members of the armed group should it occur in the night time. This word appeared in the paper. It was written by Spies on a piece of paper containing two words, "letter-box—Ruhe." What of that? Such communications often came for the newspaper, and were published free. He took a piece of paper and scribbled "letter-box" to indicate what column the manuscript was for, and then wrote "Ruhe," as requested by his correspondent. The same explanation applied to the letter "Z." It was not Spies' business to inquire what it meant. If bloodshed depended upon the insertion of that word he would not have written it; he would have gone to his lieutenant, Fischer, and instructed him to put it in the "letter-box." But Spies wrote it boldly, sent it in to the compositors indifferently, and then when the officers go to the office they find it along with the editorial, the same as any matter of trash or insignificant manuscript. Balthazar Rau went to the office and said there was a rumor on the street that "Ruhe" was published—that it meant trouble and

dynamite, or something to that effect. Spies inquired as to its significance, and Fischer assured him it had no reference to the Haymarket meeting; it was simply a suggestion to the boys to keep their powder dry. Nowhere at any place in the record from beginning to end was there any testimony to the effect that anything else was contemplated than the congregation of members of the armed group at their respective stations to take the part of the strikers in the event of their being attacked by the police. The witness has got to be born who could testify that the word "Ruhe" had any reference, even in the slightest degree, to the Haymarket; no man could be brought and tortured on the rack to confess that there was any such connection between the word and the Haymarket meeting, which the State suggested.

It is claimed that Lingg was engaged in the manufacture of bombs on the day of the Haymarket meeting. I do not deny that; it is practically conceded that he was so engaged. But what did he do with the bombs? Are you, sitting in judgment upon the lives of these eight men, going to say: "We will infer that; we will suppose that; we will guess that he sent some of them to the Haymarket." Has the time come, gentlemen, when the lives of men are to be destroyed by guesses, by suppositions, and by inferences? The law of the land is plain; it cannot be misunderstood. All counsel agree as to what it is—that the evidence must establish, not a guess, not a supposition, not an inference, but facts, and facts necessary to convince you beyond all doubt that every link in the grand chain of evidence is perfect and complete. Why were Lingg and Seliger on the North Side that night with bombs in their pockets? I don't know. I know they did not turn their faces toward the Haymarket. They went toward Clybourn avenue with bombs. Was their idea to blow up the station? If it was, why in God's name didn't they blow it up? What prevented them from blowing it up? They were there and armed; they were ready and had the disposition for the

work; the arrangements were all made. Why didn't they blow the station up? The fact that they did not shows the improbabilities and falsehoods of some of the State witnesses who were swearing for their lives.

With respect to the condition of the Haymarket meeting, let us consider whether it was riotous and boisterous, or civil and quiet. The testimony seems to have taken a wide range on this point. I believe for my part that it is impossible for men to convey to jurors the idea of the condition of the meeting from the expressions that it was quiet and orderly, or riotous and boisterous. I regard these terms as expressing conclusions and no expressions of facts. From everything that has appeared in the evidence, I believe that it was a quiet, peaceable gathering. We have now arrived at the time the meeting was in progress, and the police bore down upon the scene. At that particular time there was no difference in the condition of the meeting from what it was when it was convened, except, the crowd being less, it was correspondingly more quiet than at the opening. This was the time about which history was to be written. The time had arrived for the social revolution, the destruction of the police and militia, when pistols, bowie-knives, poisoned daggers and dynamite were in order; but where were these men who were the ringleaders of this vast, this awful conspiracy? At the beginning Fischer and Parsons were at a meeting in Zepf's Hall; Engel was at home engaged in a game of cards with his friends; Schwab was at Deering addressing a quiet meeting of laboring men; Neebe was at home in the bosom of his family; Lingg, the man who prepared the implements of warfare, was on the north side; Spies and Fielden were at the Haymarket. The time had come for the blow to be struck which was to carry terror to the hearts of capitalists and overthrow the government, and yet here these two men were quietly arguing with the police that the meeting was peaceable. But the prosecution says the word "*Ruhe*" means rest and quiet, and, therefore, when Fielden said:

"This is a quiet meeting," or "We are peaceable," they claim that it was the signal for the commencement of hostilities. That is, in my opinion, an unfair deduction from the facts.

If there was such a conspiracy as claimed, bombs would have been thrown from the housetops, volleys of pistol shots fired, and all the horrors of street warfare inaugurated. Why was there the hurry in the manufacture of bombs? Thirty-one were found under a sidewalk. Why, if these bombs were made for the destruction of the city, was only one bomb used on that fateful night? But it was claimed that part of the conspiracy was to blow up the police stations; that was the duty of the leading Socialists who were not present at the Haymarket meeting. Why didn't those men carry out their part of the programme? The whole case of the prosecution was patched up with suggestions and insinuations and the testimony of witnesses whose character had been impeached. Seliger's position on the stand, and the startling testimony he gave, could be explained on the theory that he was swearing to save his own life. Ancient and modern history has recorded three of the grandest, most consummate and infernal liars that have existed since Adam was placed in the Garden of Eden. First of all, greatest of all in infamy and falsehood, is Harry L. Gilmer; next is M. M. Thompson, and the third is Ananias, whose Christian name I never heard.

The country was aroused on the night of May 4. On the 5th men were arrested indiscriminately in Chicago. The investigation began, and has never ceased. The reporters went boldly forth, gathering the news, and every one read their accounts, anxious to find out the facts. The Coroner's jury met and desired to fasten the crime on the guilty persons. But where was Gilmer all that time? Where was he when the grand jury was in session, when the trial began? He kept himself concealed until it was evident there was a missing link in the chain of testimony connecting the defendants with the crime of murder. Then he came into the

court-room and picked out Spies as the man who struck a match and lighted the fuse and Schnaubelt who held the bomb and threw it into the ranks of the police. Gilmer was the most gigantic and colossal liar of all time.

It was claimed that the words, "We are peaceable," mean "Go ahead; fire your revolvers and throw your bombs." The jury was asked to believe that the mob opened fire and sent their missiles of death into the bodies of the officers before they had time to raise their hands. The preponderance of the testimony was against that proposition, and the doctors testified that few policemen were injured by pistol bullets. The fragments of the bomb did the mischief, and, without waiting for orders, according to the testimony of an ideal witness, the police drew their revolvers and fired volley after volley to kill. No one but members of the police force testified to seeing any of the defendants shoot after the bomb burst. I do not believe that testimony; the preponderance of evidence is in the opposite direction, and does not warrant you believing it. But suppose Fielden did shoot after getting down from the wagon; suppose this case is to be determined on the supposition that he did shoot. If he were conducting a meeting which was not in violation of good order and law, no man, and no set of men, had a right to turn their revolvers upon him and compel him to jump from the wagon, and if they did so, he was justified in shooting. I justify no one in drawing a revolver in defense of an unlawful act, but I can justify any man resisting another when his life is at stake and in the right, and his assailant is wrong.

The police have been denominated blood-hounds. They are blood-hounds upon the scent of every man who goes forth in the darkness to rob and steal. They are blood-hounds in the pursuit of all law-breakers and evil-doers. It is the steady tread of the night patrolman in our waking hours which gives to our minds security, peace and rest. They are blood-hounds who must necessarily exist in all communities, whether large or small. Every young person,

every young girl who goes to a large city for the first time should be warned to pass by the lady rustling in silks and satins, to disregard the gentleman robed in broadcloth and bedecked with jewels, and go to the sunburnt, sturdy policeman, whose clothes are blue, who is bedecked with brass buttons, surmounted by a star, for the information they need for their guidance. I have no words to utter against the police force of this city as a whole, and as a class. Of course, they are like all other classes. There are rogues and scoundrels among them. It is so in the profession of the law; it is so in the profession of medicine. Wolves in sheep's clothing even invade the pulpit. Everywhere, in all classes, we find bad men, and most assuredly we must expect to find them on the police force of this and other cities. But we cannot do without them; we do not desire to do without them. They are conservators of the law and peace; they are necessary for the maintenance of order.

And yet we criticise them sometimes. If there is a man responsible for the result at the Haymarket meeting, for the action of the police, it is the man who ordered other men, and not the men who like soldiers obeyed the order. It is the man who by ill-judgment called upon them to go forth, and not the men who simply obeyed the instructions they received. While I say this much for the policeman, if I could do or say anything which would alleviate the sufferings of the widow or orphan made by the occurrences of May 4, God knows, I would do it and say it. But are the widows and orphans of those dead policemen to be benefited by making more widows, or the misfortunes of the orphans in any way alleviated by making more orphan children? I believe there are policemen who have little regard for the truth, and witnesses, wearing the blue and the star, have given testimony in this case which I believe to be false, and which I believe they at the time they were giving it knew to be false. Yet I do not arraign the force or service to which they belong. We find such men everywhere. Some of their testimony was unreasonable. Al-

though their duty should prompt them to stand by the law for the protection of all citizens, they do not do so.

Now, gentlemen, I am nearly done with what I have to say. Not that I have by any means covered the case or testimony, for that is absolutely impossible unless I should stand here and talk by the week, which I do not propose to do. If you hang these men without justice, upon any other theory than that which is recognized as legal and proper; if you are carried away by your prejudices, if you are swayed by the prejudice of any man, by reason of the destruction of their lives by that means and for that reason, they become martyrs. Whenever a man asserts a principle, and, without justification of the law, by reason of that principle he is cut down, he is a martyr to the cause, and the cause is assisted by his martyrdom. I believe that is the experience of the civilized world.

But, they say, we have analyzed the bomb which killed Degan, and find it was manufactured by Lingg. They employed experts, who determined that it was composed of a mixture of lead and tin. I do not doubt it; I do not deny it; but what if it was? They say that Lingg made it. I say it is very doubtful whether he did or not. You might guess that he did, and I might perhaps guess that he did. Whether he did or not, I undertake to say, is a matter of no importance in this case. Suppose I go into a gunshop on Clark or Washington street and say I want a revolver of 38 or 44 caliber, and that when it is shown me I ask the dealer to load it. After it is loaded I pay for it and step out in front of the building and wait until a man whom I wish to assassinate comes along. I fire the revolver, and human life is destroyed. Who is to blame for that? Is there any question, or can there be any argument, to the effect that the man who sold me the implement of death, or gave it to me, is legally responsible for my crime. Yet the gentlemen will say there are purposes for which revolvers can be legitimately used; but where is the legitimate use for a bomb of this kind?



If Lingg was approached by any man who said, "I want one of those bombs, I want to use it," and Lingg said, "All right, take it, and the man takes it, carries it to the Haymarket meeting or anywhere else, and destroys human life by its explosion, Mr. Lingg can never be convicted of the murder of the man whose life is destroyed. There is no doubt of that proposition in any mind; there is no question about it.

Now, gentlemen, I am about to close. There is a little evidence that needs explanation, perhaps, as to certain of these defendants. There is Oscar Neebe—what has he done? He went into a saloon with a couple of "Revenge" circulars, and says: "Six laboring men have been killed at the Haymarket; perhaps the time will come when it won't go that way." He lays the circulars down, drinks his beer and goes away, and that is all there is against him. They search his house when he is confined in jail. They find a single-barreled shotgun, an old revolver and one empty shell and a sword. And because of these facts they demand that his life shall pay the penalty. We don't have to find murder in this case. There never was a proposition of that kind suggested by any intelligent court. The defense has its theory to carry out. The burden is thrown upon the people, and it never shifts. The burden of the people is to establish the guilt of these defendants beyond a reasonable doubt, and it never shifts upon the defense. No theories, no change in the chain of circumstances must be made by the defendants. They stand innocent before the law. They stand before the law as men of character and of innocence, and are only compelled to produce testimony when the State has established certain circumstances which they are warranted to rebut. No lawyer has a right to argue to any jury that the defendant should have put certain witnesses on the stand or prove untrue certain propositions until the conversable proposition is established by the State beyond all reasonable doubt. Are you going to hang Neebe; are you going to hang Spies; are you going

to hang any of these defendants on such a chain of circumstances? Are you going to be driven by passion, influenced by prejudice, to do that which you will regret the longest days of your lives? Most of the defendants are young men. The most of you are young men. The future is uncertain; the world is before you. You are now in the prime of youth, and so are these defendants. Youth has been described as the most beautiful season of life. An old man, who had lived four score years, was asked what, in his opinion, was the most beautiful season of life. He replied: "You see yonder grove. When the spring comes, and the buds are bursting into life, and the flowers bloom, I think how beautiful is spring. When summer comes, and the branches are rich with foliage, and the birds are singing among the trees, I think how beautiful is summer. When autumn comes, and the leaves take on the gold tints of frost, and the fruit is hanging from the branches, I think how beautiful is autumn. But when sere winter comes, and the branches are bare, I look through their barren, naked boughs, and never until then do I see the shining stars above."

Gentlemen, I will ask whether you are going to do a rash act. Are you going to do something which will haunt you to the grave? Are you going to do something which will follow your gray hairs, if you should live to be fourscore, in sorrow? Are you going to commit an injustice to these men and their families; are you going to make widows of their wives, helpless orphans of their children?

I have said that your cool deliberation and judgment is what we desire. I do not propose to appeal to your sympathies, but, for God's sake, I ask you, gentlemen, to be careful, to be cautious, to erect no skeletons before your vision for the remainder of your days. Have no skeletons dangling within your view, with distorted faces, distended nostrils and protruding eyes. Startled by no mother's groans, startled by no fond wife's wails or loving sister's shriek or helpless children's cry, may we stand by humanity, may

we stand by the principles of justice, may we stand by each other as we would that others should stand by us. And may each one of you, in your cool deliberation and judgment, say, "What I would that others would do unto me, if I were situated in the place of these defendants, even that am I now ready to do unto them."

MR. BLACK, FOR THE DEFENSE.

*August 13.*

*Mr. Black.* Gentlemen of the jury: On the morning of the 5th of May, 1886, the good people of the city of Chicago were startled and shocked at the event of the previous night, frightened, many of them, not knowing whereunto this thing might lead. Fear is the father of cruelty. It was no ordinary case. Immediately after that first emotion came a feeling which has found expression from many lips in the hearing of many, if not all of you: "A great wrong has been done; somebody must be punished, somebody ought to suffer for the suffering which has been wrought." Perhaps it was that feeling—I know not—which led to the unusual and extraordinary proceedings which were taken in connection with this matter immediately following the 4th of May. Perhaps it was that feeling, in a large measure, which led to the arrest and presentment of these eight defendants. Perhaps it was something of that feeling which will explain the conduct of the prosecution in this case. I am not disposed to say that there has been any willful or deliberate intent on the part of the representatives of the State to act unfairly. I am not disposed to charge that there has been upon their part any disposition to do an injustice to any man. But in their case, as in the case of all, passion perverts the heart, prejudice corrupts the judgment.

On the night of the 4th of May, a dynamite bomb was thrown in the city of Chicago and exploded. It was the first time that in our immediate civilization, and imme-

diately about us, this great destructive agency was used in modern contests. I beg you to remember, in the consideration of this case, that dynamite is not the invention of Socialists; it is not their discovery. Science has turned it loose upon the world—an agency of destruction, whether for defense or offense, whether for attack or to build the bulwarks round the beleaguered city. It has entered into modern warfare. We know from what has already transpired in this case that dynamite is being experimented with as a weapon of warfare by the great nations of the world. What has been read in your hearing has given you the results of experiments made under the direction of the Government of Austria, and while you have sat in this jury-box considering the things which have been deposed before you, with reference to reaching a final and correct result, the Government of the United States has voted \$350,000 for the building of a dynamite cruiser. It is in the world by no procurement of Socialism, with no necessary relationship thereto. It is in the world to stay. It is manufactured freely; it is sold without let, hindrance or restriction. You may go from this jury-box to the leading powder companies of the country, or their depots, and buy all the dynamite that you wish without question as to your purpose, without interrogation as to your motive. It is here. Is it necessarily a thing of evil? It has entered into the great industries, and we know its results. It has cleared the path of commerce where the great North River rolls on its way to the sea. It is here and there blasting out rocks, digging out mines, and used for helpfulness in the great industries of life. But there never came an explosive into the world, cheap, simple of construction, easy of manufacture, that it did not enter also into the world's combats. I beg you to remember also that hand-bombs are not things of Socialistic devising. It may be that one or another, here and there, professing Socialistic tenets, has devised some improvements in their construction, or has made some advances with reference to their composition; they have not in-

vented them. The hand-grenade has been known in warfare long ere you and I saw the light. The two things have come together—the hand-grenade, charged no longer with the powder of old days, but charged with the dynamite of modern science. It is a union which Socialists are not responsible for. It is a union led up to by the logic of events and the necessities of situations, and it is a union that will never be divorced. We stand amazed at the dread results that are possible to this union; but as we look back over history we know this fact, contradictory as it may seem, strange as it may first strike us, that in the exact proportion in which the implements of warfare have been made effective or destructive, in that precise proportion have wars lost the utmost measure of their horror, and in that precise proportion has death by war diminished. When gunpowder came into European warfare there was an outcry against it. All the chivalry which had arrogated to itself the power and glory of battle in martial times sprang up against the introduction of gunpowder, an agency that made the iron casque and shield and cuirass of the plumed knight no better a defense than the hemp doublet of the peasant. But now, instead of wars that last through thirty years, that are determined by the personal collision of individuals, that desolate nations, the great civilized nations of the world hesitate at war because of its possibilities of evil, and diplomacy sits where once force alone was intrenched. The moral responsibility for dynamite is not upon Socialism.

The sole question before the jury was who, threw the bomb, for the doctrine of accessory before the fact, under which it was sought to hold defendants, was nothing but the application to the criminal law of the civil or common law doctrine that what a man does by another he does himself. When the prosecution charged that the defendants threw it, their charge involved that the bomb was thrown by the procurement of these men, by their advice, direction, aid, counsel or encouragement, and that the man who threw

it acted not alone for himself, or upon his own responsibility, but as a result of the encouragement or procurement of these men. The State must show that the agent of the defendants did the deed, and it is not sufficient to show that the defendants favored such deeds. And now, gentlemen, let us take up the real issues. I believe I can read in your faces that you are ready to give an answer to your consciences, to your fellowmen and yourselves for your conduct in the investigations you are now making. I pray you lend me at once your judgment and your heads.

Has the State proven to your satisfaction, beyond a reasonable doubt, that August Spies, Michael Schwab, and Adolph Fischer were personally and individually advising and providing for the throwing of the bomb on the night of May 4? Direct testimony has been introduced to prove that. It is not pretended that the other defendants are connected by direct testimony with the offense of that night. Two witnesses were placed upon the stand to prove the lighting and throwing of the bomb, Harry L. Gilmer and M. M. Thompson. I must say, gentlemen, that I think their testimony is altogether untruthful. Gilmer's story is utterly incredible and absurd. Could the jury believe beyond any reasonable doubt, beyond any substantial question, that August Spies, the brainiest man of the crowd, would commit the stupendous and supreme folly of first illuminating his face so that every man might see and know it, and then lighting the fuse of the bomb? You saw Spies on this stand; you heard his testimony. I think I can safely leave his case in your hands. If it is a fact that Spies was on the wagon when the bomb was thrown, the story of Gilmer is shattered and has not a shadow or shade of truth in it. Then this perjured witness tried to connect Fischer with this awful event, when it had been conclusively shown that this defendant was drinking beer at Zepf's Hall at the time. If there had been any effort on the part of the State to deliberately corrupt justice in one particular, and make the jurors parties to murder, they should bear that in mind in

considering the whole case. Besides, there was evidence that the bomb did not come from the alley, but was thrown about twenty or forty feet south of the alley. It was not the duty of the defense to prove the falsity of Gilmer and Thompson's testimony; their business was only to raise a reasonable doubt as to its truth, and it was the duty of the jurors, as citizens and men, acting under the law which is above all law, to give the defendants the benefit of that doubt.

The theory of the State was this: That the meeting on the night of May 4 was a result and incident in the carrying out of a general conspiracy to murder; that all the defendants were parties to that conspiracy; that certain of them were active participants in the meeting, and the evidence sufficiently and incontrovertably connected them all with and made them guilty of the murder. Now, the fact was that the Haymarket meeting was not called by any of the defendants. The "revenge circular," which Spies wrote after the Black Road tragedy, had no reference to that meeting. The attention of this defendant was called to the wording of the circular calling the meeting, and he pointed out an objectionable line. Spies had slept over the matter. Perhaps the very excess and violence of his feelings the day before had brought about a reaction; he was just and calm, and at his direction the objectionable line was stricken out. Did that look like the action of a man who was preparing for the culmination of a scheme of revolution? That day a request came through the mail to Spies to insert the word "Ruhe" in the "Letter Box." That was an ordinary request and Spies complied with it, not knowing the significance of the word. Upon the State's own showing the word had no reference to the Haymarket meeting. It was claimed that it was part of the general plan that the armed groups should be present at that gathering. But they were not there, and so far as known there was just one bomb with which to inaugurate the great revolution. Who is the man that had the bomb and why was he there? They knew not, nor did they know what his motive in his final action was. But they

did know that August Spies had nothing whatever to do with the throwing of the bomb. In his opening remarks at that meeting Spies said they had not assembled for the purpose of rioting or making a disturbance, but for the discussion of the grievances of the laboring men. Parsons next took the stand and talked for an hour. His speech was full of statistics, and by no means inflammatory. He told them Socialism aimed at the life of no man; it aimed at the system of society and not at individuals. This remark was made in response to a cry of "Hang Jay Gould," in whose place, Parsons declared, hundreds would rise were he slain.

The evidence was that it was peaceable and orderly and no unusual remarks were made by the speakers. There was nothing dreadful in the expression, "Arm yourselves in the interest of liberty and of your rights." But still Spies, the arch-conspirator, was bent, determined, resolved irrevocably, that then and there should the inauguration of the social revolution take place. It was nonsense to advance or believe in any such proposition. Whatever might have been the ultimate desires of these men, whatever might have been the social change to which they looked forward and of which they spoke, it was more than idle to take the position and argue to intelligent men that the meeting was taken hold of by Spies and manipulated for the purpose of precipitating a conflict with the police. That idea was utterly refuted by the absence of preparations for such an event and the conduct of the speakers. It was a gratuitous assumption on the part of the State that Fischer went to the meeting of the armed groups as Spies' lieutenant for the purpose of arranging the Haymarket meeting and that Spies attended to carry out the programme which he devised for him. In a case where life and death is at stake, the imagination of the prosecuting attorneys should be brought to a halt; it is time that you as jurors should say in your conscience, and before the tribunal of your own manhood, "We cannot guess away the life of any man." Spies might be a Socialist, an Anarchist perhaps, but he was not devoid of the common feel-



ings of humanity. There had been frequent contests with the police and the people, and as the editor of the workingmen's paper of Chicago, a paper devoted to the consideration of the interests of the great wage classes, he naturally took their side against the organized police. When he saw the police firing into the flying crowd on the Black Road, they could imagine such a man under such circumstances going to his office and writing the "revenge circular," in which there was no suggestion of a meeting, in which there was nothing but the breaking out of an intense indignation, and an attempt to arouse that feeling which sometime in the future would reach such a point that such would no longer be possible or tolerated. That could be imagined without the further proposition that Spies' design and intention was to precipitate a conflict.

Who was next charged with active participation in this pretended conspiracy? Fielden. This defendant addressed the meeting. He had reached the conclusion of his speech and the whole meeting was about to separate peacefully and quietly when the police came. It was stated that Fielden fired three shots at the police. The story told as to the first shot while he was getting out of the wagon was a deliberate lie. Officer Krueger testified as to the other shots, and wanted the jury to infer that he was wounded in the leg by Fielden. Officer Wessler also claimed to have had a duel with Fielden. This testimony was contradictory, and if false the State had introduced it to hang a poor teamster; it was more wicked and cowardly than the alleged conspiracy of the Socialists. "Oh!" cried the prosecution; "he is only a Socialist; it is only the life of one of the common herd, who has grown dangerous to the peace of those who would wrap the mantle of their selfishness about them, and he is to be put away." The highest civilization of the State is the care that it has for the life and safety of its common people. If there were members of the police capable of such action it was time that the strong arm of the law laid hold of them and prevented further mischief. There was not a word of truth in the story

that Fielden fired at the officers. That story is a wicked, wicked effort to bring a fellow being to the scaffold by false swearing.

What were the circumstances upon which the State relied to place the noose about Parsons' neck? First, that he was an American. It was a horrible thing that an American should sympathize with the common people; that he should feel his heart respond to the desires of oppressed working-men. Second, he was the editor of the *Alarm*, and third, he spoke at the Haymarket meeting. It was not suggested that he knew anything about the Monday night meeting. If Parsons had ever dreamed of violence that night would his wife and her lady friends have attended the meeting? Was there anything in those circumstances to show that Parsons knew of any plan to throw the bomb?

Against Schwab it was proven that he wrote an occasional editorial, attended meetings of Socialists, and upon that particular night he was at a safe distance from the Haymarket. If anybody was there it was a suspicious circumstance; if anybody was not there it was still a suspicious circumstance. It was the old parson's dilemma: "You will be damned if you do, and you will be damned if you don't." The case of Fischer and Engel could be considered together. They attended the Monday night meeting. Fischer was at the Haymarket a short time on Tuesday night, and he then went to Zepf's Hall, where he and Engel were when the bomb was thrown.

It is perhaps proper that in view of the circumstances that Fischer and Engel were the only two defendants at the West Lake street meeting on Monday night, I should present briefly my opinions touching that meeting as relating to this case. Two witnesses, Waller and Schrade, testified as to what occurred at that meeting. Waller said there were seventy or eighty people present; the other placed the attendance at thirty-five to forty. Let us suppose thirty-five or forty met together in that basement. In the progress of the meeting it transpired that there had been a meeting of the north side

group of which Mr. Engel was a member, on the previous morning (Sunday). At that meeting a resolution was adopted, which was brought before the Monday night meeting for consideration, and it was adopted in the manner indicated by Seliger. What was the purport of that resolution? I think I state it fairly to the State and fairly to the defendants themselves, when I say that the action then and there resolved upon was this, no more, no less: That if in the event of a struggle the police should attempt by brute force to overpower the strikers unlawfully and unjustly, those men would lend their help to their fellow wageworkers as against the police. A plan of action was suggested by one of the group which contemplated the blowing up of police stations, cutting telegraph wires and disabling the fire department. Every particle of that resolution, gentlemen, was expressly dependent upon the unlawful invasion of the rights of the working people by the police. Nothing was to be inaugurated by the so-called conspirators, there was to be no resort to force by them in the first instance. It was solely defensive, and had reference alone to meeting force by force; it had reference alone to a possible attack in the future, dependent upon the action that the police themselves might take. I am not here to defend the action of that meeting. The question here is: Had that action anything whatever to do with the result of the Haymarket meeting? The action of the north side group had nothing to do with that, since the Haymarket meeting had never been dreamed of or suggested at that time. By whom was the Tuesday meeting suggested? What was its scope, purpose and object? As then and there declared, it was simply to be a mass meeting of workingmen with reference to police outrages that had already taken place. Were the wounded men, those conspirators who met at West Lake street, present? No; they were not to be there. That is the testimony of Waller and Schrade. I am not here even to say that the proposition to call that meeting was a wise one. The event has proven how sadly unwise it was. But I am here to say that the men who in that Monday night meeting proposed the calling of the Tuesday night

meeting, if we take the testimony of the State itself, had no dream or expectation of violence, difficulty or contest on that eventful night. But before the Tuesday night meeting was proposed, a suggestion was made that they ought to have some sort of signal for action, and the word "Ruhe" was suggested by somebody. Waller could not tell who suggested it; Schrade did not know it had been agreed upon. Evidently there was no very clear idea that night what "Ruhe" did mean, because Lingg saw it in the paper at 11 o'clock, and said: "That is a signal that we ought to be over at 54 West Lake street." Waller finally, under close examination by the State, said the word "Ruhe" was to be inserted in the "Letter Box" of the *Arbeiter Zeitung* in the event of the time arriving for a downright revolution. Had that revolution come; had it commenced when the word was put in the "Letter Box?" No. When the members saw this in the "Letter Box" what were they to do? Go to the Haymarket and attack anybody? No. They were to go to their respective places of meeting, and then, according to advices brought to them, were to determine upon a course of action. It had no reference to the throwing of the bomb at the Haymarket. Did it pick out the man who was to throw the bomb? Did it provide that a collision between the police and the people was to be brought about at the Haymarket? Did it contemplate murder? Not at all. When Fischer told Spies that the word "Ruhe" had no connection with the Haymarket meeting he spoke the truth. It was a signal that the armed men should meet at the places designated by themselves to determine what action should be taken with reference to whatever might have transpired.

. August 14.

*Mr. Black.* I have been told by the attorneys for the State that in addition to the law books from which they had already quoted they intended to cite two or three other cases. I wish, therefore, to call attention to those cases and a few others for which the defense contend. *Hamilton v. People*, 113 Ill., which was quoted by the State. It had no

application to this case, because it could not be contended that the Haymarket meeting was assembled for any felonious purpose. Another case from the 110 Ill., *Richman v. The People*, in which the same doctrine was laid down, was equally inapplicable. If the man who threw the bomb was a member of a conspiracy to which the defendants were parties they would be guilty, but there was no such proof. In Wharton's Criminal Law, relied upon by the State, where the doctrine was laid down that in an unlawful assembly the act of one was the act of all, there was this sentence, which the counsel for the State omitted to read: "Where, however, a homicide is committed collaterally by one or more of a body unlawfully associated, from causes having no connection with the common object, the responsibility for such homicide attaches exclusively to its actual perpetrators." Applying this to the Haymarket meeting, the State has failed to show that the bomb was thrown in furtherance of any common design in which the defendants participated, but, on the other hand, the proof was clear and abundant that the Haymarket meeting was called to advocate the eight-hour movement, and nothing was said there about dynamite at all.

But it is to be borne in mind that the meeting of the armed section never took place. There was no meeting of the Northwest Side groups; there was no meeting of any group pursuant to the word "Ruhe." Were any bombs to be thrown, any violence to be resorted to? No. If the police made an attack, a committee was to take word to the groups, and the groups were then, and not until then, to determine what action they should take in the line of offense. Does that make every man who was present at the Monday night meeting responsible for the throwing of the bomb? Not at all. Unless they are all responsible, it does not make Fischer and Engel responsible. Engel was not at the Tuesday night meeting. Fischer was there and went quietly away before the bomb was thrown. There was absolutely nothing in connection with the Monday night meeting which contemplated

violence at the Haymarket or provided for the throwing of the bomb.

Let me call your attention in passing to another thing. When Waller, having from some source heard of the lamentable occurrence at the Haymarket, went to Engel's house, he found him drinking beer with two or three friends. After listening to the details of the affair Engel said, while Waller was saying, "Let's do something," "You had better go home. I have no sympathy with a movement of this kind. The police are of the common people, and when the general revolution does occur, they should be with us. I am utterly opposed to this slaughtering of them." That is the full extent of the case against these two defendants, except the further fact that Fischer had a pistol and a dagger. It is not right to hang any man for the Haymarket murder simply because he had a dagger or a pistol in his possession.

As to Lingg, who came from that republic sitting in the center of Europe preaching the everlasting lesson of liberty, he came here in the fall of 1885, and became a member of the Seliger household. Whatever he knows of social and labor conditions in this country he learned from those about him. He joined a carpenters' union, being himself a carpenter by trade. He attended the meetings of that union. Young, active, bright, capable, he enters the band of which they speak, and manufactures bombs. There is no law against that, gentlemen; but they claim that is a circumstance from which you must draw the conclusion of his guilt, when taken with other circumstances, for the Haymarket tragedy. The State put on the stand one man, Lehmann, to whom he gave bombs. Did he tell Lehmann to go to the Haymarket and use the bombs there? No. Lehmann swears that he said: "You take these and put them in a safe place." And Lehmann hid them where the officer, piloted by him, found them. Does that prove that Lingg sent a bomb to the Haymarket for the purpose of having somebody killed? How did he come to make bombs; was it a matter to engage in on his own volition or responsibility? No. The Carpenters' Union at

one of its meetings resolved to devote a certain amount of money for the purpose of experimenting with dynamite. You may say that was not right, but he was not responsible for it. There is no more reason in holding him responsible for the Haymarket affair on account of his experiments than there is to hold every other member of the Carpenters' Union for the same thing. That is how Lingg came to make bombs. By the side of dynamite a bomb or a shell is a toy. The man who manufactures the dynamite is the one who sets the engine or destruction in motion; but no one ever thinks, when a murder has been committed through any instrumentality of fastening the responsibility of the crime upon the man who made the instrument of death. If it were so, you could trace to the Colt Manufacturing Company, the Remington Manufacturing Company, and the manufacturers of bowie knives, all the murders resulting from the use of their weapons. But, it is said, a dynamite bomb has no use in civilization but for violence. Has a bowie knife or a revolver any known use in civilization but for violence? Lingg manufactured one of the bombs which the police officers exploded. Suppose that in exploding it some one had been killed, would it occur to anybody to put Lingg on trial for murder in that case? The State must show not that a bomb of certain manufacture did a certain work, but that the man charged with murder exploded it. A bomb is perfectly harmless until some other instrumentality intervenes. The Lingg bombs would kill nobody unless some human independent agency took hold of them. Did Lingg know on Monday night that one of his bombs was to be used? He could not have known it, because the testimony is incontrovertible that it was understood by the men who met at 54 West Lake street there should be no violence at the Haymarket meeting. And yet the State asks you to say that Lingg shall be hanged because he manufactured bombs. The man who threw the bomb did the independent act necessary for its explosion. Who was that man? Was he connected with the defendants? The evidence does not show it.

And a word more about that. This boy (Lingg) was dependent upon others as to his impressions of our institutions. He went to Seliger's house. Seliger is a Socialist; he has been in this country for years. He is thirty-one years of age; Lingg is twenty-one. And yet the great State of Illinois, through its legal representatives, bargains with William Seliger, the man of mature years, and with his wife, older even than himself, that if they will do what they can to put the noose around the neck of this boy they shall go scathless. Ah! gentlemen, what a mockery of justice is this.

In the case now on trial the crime was collateral, and the law would not hold the defendants responsible for the act of a man who was not known to have any common purpose or agreement with them. The case of Lamb, tried in Cook County for the murder of Officer Race and convicted. The Supreme Court set aside the verdict, as the murder occurred subsequent to the burglary, and became collateral to the original crime. In the same lines, *Regina v. Skeet*, from Foster and Finlayson's *Nisi Prius Reports*. In that case a party of men were trespassing, and one of them, Skeet, had a gun. A gamekeeper, supposing they were poaching, seized the gun and it accidentally went off and killed him. Under the instructions of the Court the jury returned a verdict of manslaughter against Skeet and acquitted the others.

There was no law that could take away the right of the people to meet and consider grievances. When it was proposed to adopt the Constitution in 1787 the States were so careful to preserve the rights of the people that several amendments were put in.

Before the Constitution could receive the approbation of the States it was necessary that the amendment providing that no laws should be passed by Congress abridging free speech should be inserted. Such a provision was incorporated in the first constitution of Illinois in 1818, and renewed in the subsequent constitutions of 1848 and 1870. The Haymarket meeting was called for the common good. Those men believed that a great wrong had been done, a great outrage



committed, and the rights of the citizens in that assemblage had been invaded by an unlawful, unwarrantable and outrageous act.

Bonfield, in his police office, surrounded by his minions, one hundred and eighty strong, armed to the teeth, knew that that meeting was quietly and peacefully coming to its close. Nay, he had said so to Carter Harrison. When Parsons had concluded Mayor Harrison went to the station and told Bonfield that it was a quiet meeting, and Bonfield replied: "My detectives make me the same report." Yet Carter Harrison did not get out of hearing before Inspector Bonfield ordered his men to fall in for that death march. Who is responsible for it? Who precipitated that conflict? Who made that battle in that street that night? The law looks at the approximate cause, not the remote. The law looks at the man immediately in fault; not at some man who may have manufactured the pistol that does the shooting, the dynamite that kills, the bomb that explodes. I ask you, upon your oath before God, in a full and honest consideration of this entire testimony, who made the Haymarket massacre? Who is responsible for that collision? If Bonfield had not marched there, would there have been any death? Would not that meeting have dissolved precisely as it proposed to do? Did the bomb thrower go down to the station where the police were and attack them? A bomb could have been thrown into that station with even more deadly effect than at the Haymarket itself. There they were, massed together in close quarters, in hiding, like a wild beast in its lair ready to spring. Did the bomb thrower move upon them? Was there here a design to destroy? God sent that warning cloud into the heavens; these men were still there, speaking their last words; but a deadlier cloud was coming up behind this armed force. In disregard of our constitutional rights as citizens, it was proposed to order the dispersal of a peaceable meeting. Has it come to pass that under the constitution of the United States and of this State, our meetings for the discussion of grievances are subject to be scattered to the

winds at the breath of a petty police officer? Can they take into their hands the law? If so, that is anarchy; nay, the chaos of constitutional right and legally guaranteed liberty. I ask you again, charging no legal responsibility here, but looking at the man who is morally at fault for the death harvest of that night, who brought it on? Would it have been but for the act of Bonfield?

As long as the Mayor was there Bonfield could not act, but as soon as Harrison had gone the officer could not get to the Haymarket quick enough. The police had been searching the files of the *Arbeiter Zeitung* and the *Alarm* for years to put before the jury the most inflammatory article. Jesus, the great Socialist of Judea, first preached the socialism taught by Spies and his other modern apostles. John Brown and his attack on Harper's Ferry may be compared to the Socialists' attack on modern evils. Gentlemen, the last words for these eight lives. They are in your hands, with no power to whom you are answerable but God and history, and I say to you in closing only the words of that Divine Socialist: "As ye would that others should do to you, do you even so to them."

MR. GRINNELL FOR THE PEOPLE.

*Mr. Grinnell.* May it please the Court, and gentlemen: I shall have to ask your great indulgence. I approach this part of my duty, in which there is no pleasure to me, with timidity and fear—timidity that of the supposed great task, the supposed results may in some way depend upon me; a fear that I may leave unsaid or undone something that ought to be done or ought to be said. Therefore, I shall have to crave your indulgence, your careful consideration, not so much of what I utter as of the facts in the case. I bring to your attention no genius; I have nothing in me of that. I crave your attention to the facts, not to me; I can stir no pulse; I can make your blood flow no faster than is its wont. The facts in this case, above all cases of my experience, are more eloquent and forcible for conviction than any words that man can utter. In this temple of justice, founded upon

justice, the closing remarks of counsel have compared some low murderers to the Savior of mankind. Is the case for the defense descended so low, is it so mean that he who was for peace should be compared to these wretches here? Not only that, but they have compared these men to the father of our country. They compare them to martyrs. Why, gentlemen, let us walk out of this courtroom here now and surround these men with garlands of flowers and sing paeans of praise to their glory—because they are Anarchists. My brother Foster in your presence uttered a suggestion unworthy of him, because he is a good lawyer and has commended himself to our pleasant consideration during this long trial. My brother Foster said: "Give me but the closing of the arguments in this case and I care not how many speak before me." Does that mean, gentlemen, that Mr. Foster properly appreciates your intelligence, your integrity, and the obligation of your oaths? Or does it mean that by the sophistries and the arguments that he produces before you he hopes to gain a case against the facts? That is why I say that I approach the end of this case with fear—fear that something may be left unsaid by me, when the facts speak so eloquently; fear that I may do something that will influence you against the law, the people of this State, and even against your own convictions in favor of eight men charged with, indicted for, and in my humble conviction proved guilty of, murder.

You have been told, gentlemen, and you were correctly told, that we are making history. My fear is, further than that, that we may here be unmaking history. Let us take no step backward. Captain Black said to you that government—all governments—resulted ultimately in despotism. That is not true. The history of the world shows that government has been going toward freedom, and not despotism, and the results of despotism, the results of bad laws, of cruel laws were the birth of this, our splendid nation, on this soil. A little over a hundred years ago there came to the shores of America men driven here because of oppression abroad. Op-

pression continued, and the revolution of 1776 was born. Our soil from that day to this has been the place where people from all climes and all countries came for the freedom they sought in vain elsewhere, and, as it has been said to you in the opening, it was that freedom which induced these defendants to come here also. In that connection I would say to you, gentlemen, that we have the right here on this soil—we Americans who adopt this country as our own—have the right to criticise the nationality of the defendants; because, if a man come here in this, our country, and becomes a part of it, it is his; but when a man seeks these shores only for anarchy, only for communism, only for selfish ends and desires, he is no part nor parcel of this country. He does not belong here, and he should go back. If he commits a crime here he should be punished. Let us take no step backward. The revolution established freedom and America. Later in its history troubles brewed here and there in the experiment of Republicanism, and the result was to the benefit of the country, its strength and power. Later occurred the rebellion, and we issued from it glorified as a nation, strong in power, solid, substantial; a nation which had the dignity of its own power and, further, the respect of every nation in the world. The war has closed and anarchy has developed. Anarchy—these eight men leaders, have developed anarchy on our soil against the law, against the life of law, and, according to Mr. Black, we should “wreath garlands for them.”

It was true that Stuart Mill said “free speech is proper,” but he also said: “Any individual who by his utterances says that which causes crime or causes injury to others, shall be responsible for what he utters.”

I said to you in the opening, gentlemen, that in this country above all countries in the world is anarchy possible. In my investigation of this case, and in my contact with it, and from my knowledge of my own country and of the freedom we enjoy and possess, I am led to conclude that that is true. In those strong European governments, where it is monarchical or substantially so—strong centralized governments

—there they strangle anarchy, or ship it here. Everybody comes to our climate, everybody reaches our shores. Our freedom is great, and it should never be abridged. And here, with that great freedom and with that great enjoyment for all men, they seek to obtain their ends by anarchy, which in other countries is impossible. As I said, there is one step from republicanism to anarchy. Let us never take that step. And, gentlemen, the great responsibility which has devolved upon you in this case is greater than any jury in the history of the world ever before undertook. This is no slight mean duty that you are called upon to perform. You are to say whether that step shall be taken. You have been engaged in hearing this proof patiently many days. You have evinced in all the careful consideration that you have given everything that has occurred in this room, that desire to do right which the people are expecting at your hands. It is a grave responsibility. When the bomb was thrown its explosion sounded around the world; the echoes died away, and in our city some of the excitement; but since the proof in this case has begun there has not been a single hamlet, village, town or city in the whole world but what has watched everything that has occurred here. Not only your associates, not only the people that surround you, your friends and relations in this city, but our whole country, as well as Europe, are waiting with bated breath the result of this trial. You have evinced your responsibility to do your duty, because many times during the trial of this case, when flippant jokes were attempted, they have been frowned upon by you. This was no place for jokes. There never was, in the history of this country, to say nothing about the history of Europe, a case that has attracted such interest as has this case. I mention this to you again for the purpose of showing you the responsibility which rests upon you.

Foster says to you that there is no difficulty about the black flag; that that is a flag they use over in Europe to march around with, showing their humanitarian desires, or that they are hungry—that that is what it means. It does

not mean that here. They were going to march down Michigan avenue under the black flag and strike terror to the hearts of the capitalists. Didn't Fielden and Spies and Parsons and all that gang understand that when the valiant crowd would march up Michigan avenue under the black flag, it meant death, no quarter, piracy?

But that is not all. The Board of Trade meeting occurs, and there the black flag and the red flag were carried. The article has been read to you, and it is unnecessary to go into that again. And there they say that that meeting was copiously supplied with nitroglycerine pills, or something of that kind. They did not get at the Board of Trade, but had to march clear around it, within a block of it, and then vented their spite—aroused by their difficulties, vented their spite in speeches from the *Arbeiter Zeitung* office that night, commending their valorous deeds and acts, only saying that they were preparing for them, declaring: "We will wait for some other time, when we are ready for the police." They did not expect any police that night. They thought they would march right down. The police began to wake up.

Gentlemen, the red flag has passed in our streets enough. At that meeting which they comment so much upon in the *Alarm* and *Arbeiter Zeitung*, representing its peculiarities, its honor, and its humanitarian influences, they suggest that the red flag was carried there, and carried by women, that it is the flag of universal liberty, and it is so described here on the witness stand. Ah, gentlemen, there is but one flag of liberty in this land, and that is the stars and stripes. That flag is planted on our soil, and planted to stay, if you have the courage to carry out the law. It is a plant of liberty.

The blades of heroes fence it round;  
Where'er it springs is holy ground.  
From tower and dome its glories spread;  
It waves where lonely sentries tread.

It makes the land as ocean free,  
And plants an empire on the sea—  
Always the banner of the free,  
The starry flower of liberty.

That is the flag that these men want to wipe out and supplant with the black and the red. No wonder those flags over there (indicating flags offered in evidence) disturbed Foster. He is an American citizen, not tinctured or tainted with any of the Anarchy of his clients.

According to the law applicable to the case on trial, the jury might find the defendants guilty of manslaughter, although the indictment was for murder; as a matter of law you are trying the defendants for the murder of seven officers because, where an act of any individual or any number of individuals results in a murder of one, two, three or four men, if that one act causes the murder of one, two, three or seven the trial of one is the trial of all. In other words, if the jury saw fit to acquit the defendants of the charge under this indictment they could never be tried again; for you are trying eight men for the murder of seven officers as well as the injury of sixty others, and that is why all the proof that you have heard has been introduced.

There is one proposition of law that has been frequently suggested here; it was in all the fore part of this case. Even through Foster's argument Zeisler had no doubt about it, and probably hasn't got any now; he never will have. Salomon will never have any doubts about it. It is a proposition of law that they originally announced. Mr. Foster stated to you some propositions of law that were not correct. I think he did it, perhaps, in the heat of the argument, or, perhaps, his journey here is so recent to this side of the Mississippi that he is not yet fully informed about all the law that there is in the State of Illinois. But they have stated to you that the only way that you can convict these defendants is to point out the man, actually put your hands on him, that threw that bomb. Well, now, that is a piece of nonsense; an utter and absolute piece of nonsense. Mr. Black finally, after reference to some new cases that I gave him yesterday, substantially backed out of that proposition, and admitted here to you that if we could prove that the individual who threw the bomb was in the conspiracy we have established the case!

He has finally got to that proposition. That is the correct proposition, and we can go one step further with it. We have not got to say to you that this man was actually seen throwing that bomb and that he was a part of the conspiracy; not at all. We have a right to say to you that the circumstances of this case point to a man, whatever his name may be, or if it is unknown, and that those circumstances show to you that that man was a member of the conspiracy, then they are all guilty. Let me illustrate it, and some of you are familiar with the illustration; I was years ago myself. Supposing that I am a school teacher, and I have in my school young men and young ladies, from fourteen to twenty years of age. I say to these children from day to day, from month to month, from year to year, as have these assassins talked their doctrines—I say to these children, “I want some of you to burn down that man’s house; I don’t like him, he has opposed me, he is against me, he is an enemy.” Suppose the house is burned down, and suppose, further, that no one can point to the young man or young lady that did it, but the circumstances show that somebody went from the school house to the building and burned it. Who is guilty? Why, I am, if I advised that, and that has been done, even if we never can point out the individual who performed the deed. If that is not so, gentlemen, then are the laws of our country a fraud—if crimes can be perpetrated in that way and no one ever be punished.

Let me illustrate it again. Supposing that an individual steps into an insane asylum or gets among a lot of insane people; supposing you or I, or both of us, get ourselves in the company of a dozen or fifty insane people, and I say to that crowd of irresponsibles—and the people who follow these defendants are their dupes, ignorant men, as Spies says—supposing that I say to this crowd of lunatics, “There is Reed; kill him;” and he is killed then and there, and no one knows who struck the blow. Am I guilty of anything? Why, certainly; else are all our laws a snare and a delusion.

That is a little common sense brought to this proposition.



This reading from law books sometimes is confusing. A homely statement of a proposition of law is just as safe to rely upon when we have the authorities right back of us; and there has been no dispute of these propositions by the others.

Once in Massachusetts some one in a crowd cried out to kill a policeman, and the man who tried to do it was caught and sent to prison; and so of the decision in the case of Herr Most—that moral and physical leper, needs no abuse by us—when he undertook to start *Der Freiheit* in London. Encouragement to a person to murder. That is what these men have been doing for years. Then they go upon the stump and cry: "To arms, to arms!" and the counsel would make us believe that that is entirely Pickwickian; that it don't mean anything; that when they say "throttle the law, or the law will throttle you," it don't have any significance at all. They have been having a kind of picnic all these years in violation of law and yet they are not guilty of anything.

As to Mr. Black's appeal for Lingg, he is not a child of a sister republic, Switzerland, but of Bavaria.

Where divers persons resolve generally to resist all officers in the commission of a breach of the peace, and to execute it in such a manner as naturally tends to raise tumults and affrays, and in doing so happen to kill a man, they are all guilty of murder; for they must at their peril abide the event of their actions, who unlawfully engage in such bold disturbances of the public peace in opposition to and in defiance of the justice of the nation. Malice in such killing is implied by law in all who are engaged in the unlawful enterprise. Whether the deceased fell by the hands of the accused in particular or otherwise is immaterial; all are responsible for the acts of each if done in pursuance and furtherance of a common design. This doctrine may seem hard and severe, but has been found necessary to prevent riotous combinations and committing murder with impunity; for where such illegal associates are numerous it would scarcely

be practicable to establish the identity of the individual actually guilty of the homicide.

If the doctrine that the gentlemen began to maintain, or began to talk for in the inception of this case were true, there never could be in this world a conviction for murder against an Anarchist. Why? Because they are autonomous; each man acts for himself, and only has in connection with him one or two. And if anarchy in this country is going to prevail then have the lawyers in this case laid the foundation for more anarchy than ever existed before, because they have taught not only these eight men, but they have taught the 3,000 others that anarchy can be established in this country by simply destroying their numbers, destroying their names, losing their identity and becoming autonomous, each for himself and all for murder. That is a pleasant doctrine in America.

We have not got the bomb thrower here. We have got the accessories, the conspirators, the individuals who framed the plan, who got it up, who advised and encouraged it, and if we never knew who did it, if there was not a syllable of proof in this case designating the name of a single individual who perpetrated that offense, who threw that bomb, still the defendants are guilty. We have been trying this case under the rulings of this court upon that hypothesis. If that is not so, then the gentlemen can take advantage of their numerous exceptions in the Supreme Court.

The lawyers have been like their clients, autonomous; each man for himself, and they had given, not only as to the facts, but as to the law, the most ridiculous propositions that could possibly be conceived of in a law suit. They all agree upon one proposition: it is the only one proposition they do agree upon, and that is, gentlemen, that you ought not to convict these defendants, or any of them, because they were fools to undertake such a job as to overthrow the government. They all agree on that proposition—that they were fools, and therefore not guilty. You remember Mr. Ingham's analysis to you of the foolish conduct of criminals. It

was admirable, unanswerable, and in that connection I would say to you, not alone out of compliment to Mr. Ingham, but out of compliment to my profession, Mr. Ingham's argument stands, gentlemen, before you untouched. In the whole course of their argument they have not attempted to answer a proposition that he made to you, either of fact or law. That is why I say to you that law suits are strange things. His argument and analysis, as one of the counsel said to me in the hall, was unanswerable, and therefore they would not undertake it.

I wish to make some suggestions to some remarks. I do not propose to answer all the arguments of the counsel, because they are not arguments; they are ingenious suggestion and sophistry for the purpose of gaining a lodgment somewhere in your minds for a prejudice or a reasonable doubt.

That reasonable doubt, gentlemen, is the resort of all criminals; and when it is well understood and defined there is no trouble about it at all. Even the gentleman upon the other side, Mr. Zeisler, unfairly treated some propositions—I think, of Mr. Walker—especially in regard to that question of reasonable doubt. Mr. Zeisler said that Mr. Walker stated to you in his opening that you must not on account of fear hesitate about finding the defendants guilty. That is what he said substantially. Mr. Walker said to you, gentlemen, that your conscience must be such as when you come to consider of your verdict that a fear that you were doing wrong in finding them guilty, or a fear of the extreme penalty, should not influence you; that you were here to maintain the law, and a fear of your own reason as to the enormity of the offense, or the crime itself, should not deter you from performing that duty, and the whole of it. That is what he said. He never said, "Fear of these eight men or any of them." And I would have you understand, gentlemen, that since the beginning of this case Anarchy in this town is at a discount and in disrepute. All the slimy vermin incident to the teachings of these men have, since the trial, sought the seclusion of the holes and by-ways, and are out of sight. It is on the run;

and you acquit these men unjustly and they will flock out again like a lot of rats and vermin. Who fears them? No one—no one in this country fears any Anarchist on the earth.<sup>14</sup>

When the Haymarket tragedy occurred the spontaneous declaration by every honest, every law-abiding man and woman in this city was "an outrage has been perpetrated, a great crime has been committed; but let there be a cool, impassioned trial, and let the guilty suffer. Then and not till then." That has been the sentiment of every newspaper in this city, from which counsel sought to make you believe by quotations there had been something said to the contrary. The little extracts and abstracts that have been clipped from the newspapers that they have talked to you about are such extracts as met the disapproval of the newspapers. And even as to what Captain Black referred to the other day in your hearing, and which Foster elaborated to you, something that some crank had written to the *Inter Ocean* as to what should be done with these defendants, horrifying you by the recital, as he did, what does the newspaper say? That the man who wrote it was as bad as an Anarchist; that we are here to maintain law, not break it. And that can be said of every newspaper in this city. There never has been in the history of America, in the world, such unanimity of sentiment as has prevailed through the length and breadth of this country, not only as to the crime itself and the perpetrators, but as to the perpetrators having a fair trial. And why, especially, has there been so much talk about a fair trial in this case? Because every honest, country-loving American citizen knew that his country's life was at stake, and the only thing to do was to demonstrate the strength of the law by a fair trial, which the defendants have had.

The proof has been submitted; everything has been done for the defense that could be done. Gentlemen, it is time in

<sup>14</sup> A burst of applause in the gallery, the Court summarily suppressed and warned the audience against a repetition on pain of expulsion.

all conscience that you did have a judgment; and if you have now prejudice against the defendants under the law as the Court will give it to you, you have a right to have it. Prejudice! Men, organized assassins, can preach murder in our city for years; you deliberately under your oaths hear the proof, and then say that you have no prejudice!

*Mr. Black.* If the Court please, I desire to note an exception to what seems to me an offense against propriety in the course of this argument. In the position that he occupies I do not think it is proper that he should speak of these defendants, the men of whose guilt is the question under consideration, as he has done now, as assassins, and I desire to note an exception to the use of such a term.

THE COURT. Very well, save the point upon it.

*August 15.*

*Mr. Grinnell.* Gentlemen: I hope you rested better last night than did I. Although I am obliged to inflict myself upon you I have no ill feeling toward you. We were about, as we closed last evening, to discuss further some suggestions made by the counsel upon the other side relative to this case. It occurred to me later, after our adjournment, that I omitted to suggest one point of Mr. Foster's in regard to the law that he promulgated, insisted upon and argued to you with some vehemence. Mr. Foster stated to you that if some of his unfortunate friends from Iowa, journeying to Chicago, should through their troubles become strapped, as we put it—have no money in their pocket—and came to him for advice as to how they were to get back to Iowa, and he should say to that man: "You go down on Clark street here, some corner prominent in the city, and the first good looking man that you see come along that you think has got some money, take it from him, rob him and go to Iowa." Mr. Foster said to you—it was evidently a slip of the tongue; I do not think he would deliberately make a proposition at law of that character—Foster said to you that if he did that, that he (Foster) would be guilty of nothing, but the man who committed the robbery might be indicted and punished. This is not the law. Mr. Foster would be guilty of robbery as accessory before the fact.

Before I proceed further in the discussion of this case I wish to suggest to you something that may be in some measure personal to the prosecution, not in the way of extenuation, but in the way of apology. We stand here, gentlemen, as I told you yesterday, already with the verdict in our favor. I mean in favor of the prosecution as to the conduct of this case; but if it had not been for the testimony of Gilmer what would the defense have done in this case?

*Mr. Black.* If the Court please, I desire to note an exception to that statement by the State's Attorney—the statement that there has been given a verdict already in favor of the prosecution.

THE COURT. Save the point upon it.

*Mr. Black.* It is an outrageous statement.

*Mr. Grinnell.* I beg your pardon. I said of the conduct of the prosecution in this case. I am not here to tell you that anybody outside has passed or has not passed a verdict upon these defendants, and I have not here said and shall not say whether that verdict is for or against them.

Let me give you a little plain history. This case has engaged my personal attention, gentlemen, since the morning of the 5th day of May. It has been an engrossing attention; absorbing. It was proper that it should. Great interests were at stake; the law itself was on trial. Government was on trial; a murder had been committed. The question was, who was responsible? Gilmer told us the story on the 5th, or 6th or 7th—and has told us all the time the same. Remember this fact, gentlemen, that on the first inception of this business we had no knowledge of the conspiracy.

For a few days, gentlemen, after the Haymarket riot, for a whole week as is plain from the testimony in this case and from Captain Schaack, there was not the least particle of knowledge or a suspicion—great as had been the crime that was committed there—there was not a suspicion that it was any farther reaching than the result of these repeated inflammatory speeches which our city had listened to for years. But the magnificent efforts of Schaack, without my knowledge at that time, got the leading string which led to the

conspiracy. Then it was for the first time that we knew of Schnaubelt, or that we knew or suspected that a conspiracy existed at all. I confess here, gentlemen, a weakness, because whatever may be the instincts of the prosecutor, as they say, I have not been so long in this office as to be callous to human sentiments and to humanity, and I have not yet got to be so hardened that I believe everybody accused of a crime is guilty. I hope in the prosecution of my duty and in this office that that time will never come. When we had Spies under arrest, I confess to you, then and after it was developed that a conspiracy existed—I confess this weakness—that I did not suppose that a man living in our community would enter into a conspiracy so hellish and damnable as the proof showed, and our investigations subsequent showed he had entered into; and, therefore, notwithstanding Gilmer's statement to us so frequently, he was not shown and not identified.

Honesty of purpose is the only thing that will determine in every way the right from the wrong.

It may sound to you a little out of place for me to say here that the only mistake I have made, the only mistake that has been pointed out to you that I have made—and I frankly confess it was a mistake—was the suggestion in my opening about the bomb thrower. We knew the facts. There was no law compelling me to make my statement at the opening, no law compelling me to make any statement; I might have proceeded with the proof if I desired. I did make an opening; I undertook to make it fairly and frankly and broad. I was afraid of wearying you, as I was weary myself from the days and days that we had been working here in getting a jury, and the anxiety under which I labored. I said in that opening that we would show to you who threw that bomb; I said in that opening that we would show that the man left the wagon, lighted the match and threw the bomb. That was not absolutely correct. I should have said that the man that came from the wagon, as the proof shows, and as we know, came from the wagon, was in that group,

assisted, and that the bomb was thrown by the man whom we would show to you. My associates found fault with me in the office immediately afterward for not more clearly defining it.

Now, gentlemen, hoping that we may proceed more quietly, and with less friction, let us proceed with the case and some other reflections upon it. Every individual who presents the facts in a law suit to a jury with a preface and preliminary remarks of fairness, "Let us be fair," is not always himself fair. Mr. Foster did not in the first half day or three-quarters of a day of his argument say ten or twelve times "in all fairness" and use the word "fair" in its different qualifications and connections, with any desire probably of impressing upon you that he was more than ordinarily fair. It lends a little suspicion to the fairness, gentlemen, when it is so conspicuously advertised.

Anarchy, according to Foster, means that they are barking dogs that never bite. According to Zeisler, they are honored citizens, only fools. All great criminals are fools from the standard and standpoint of humanity and sense and good citizenship. Criminals, big or little, are fools. Cataline was a fool, but was driven from Rome for his treason. Every murderer is a fool from your standpoint and mine. Mr. Ingham explained that to you. There is no way that any criminal can excuse his act by the declaration that it has been foolish. If that is going to excuse crime, then, indeed, will the day be long hence before anybody is punished for crime. But Black says they are humanitarians. You have now all of these autonomous notions of the lawyers as to the defendants as Anarchists. Don't try, gentlemen, to shirk the issue. Law is on trial. Anarchy is on trial; the defendants are on trial for treason and murder.

*Mr. Black.* The indictment does not charge treason; does it, Mr. Grinnell?

*Mr. Grinnell.* No, sir. I will make a suggestion to you, gentlemen, upon that. Under the laws of this State, if an individual is guilty of treason his punishment is death. Punish-



ment for the offense of treason, under the laws of this State, is death. There is no mitigation, no palliation, no chance for the jury to hedge on the offense. For that offense you cannot say that this man shall have a few years in the penitentiary, and that one a few more, and that one shall suffer the extreme penalty of death. No; it is death. But treason gentlemen, can only be committed by a citizen. You and I can commit treason. None of these defendants except Parsons and Neebe, according to the statement of Mr. Foster, can commit treason under the laws. Why? Because they are none of them citizens.

On the lake front, at the different halls in the city of Chicago, at these Communistic or Socialistic halls, as the gentlemen call them—why, they are Anarchistic halls; that is what they are; don't let us have any mistake about names and titles—in all these years and months there has been openly preached to the citizens of this city treason and murder by these defendants. Why? To bring about a social revolution. And these humanitarians, these godlike men, these defendants who have the similitude of Christ, have talked openly murder on our streets. I think it ought to have been stopped before. I think when they made the utterance—not the theory, not the pleasant words of free speech, but when they made that utterance from the lake front or any other spot in the city of Chicago—that they should have been snatched by policemen and taken to the station and fined for disorderly conduct, as that would be as far as you could go except under the common law rule—that, if they had advised murder, then they could have been punished for it. We know more law today than we did; I do, I am very glad to say.

What was the "Revenge" circular written for? For war. And the purport of it was to incite the laboring man to tumult and bloodshed. Another thing: They had prepared before the McCormick meeting; they had prepared before the McCormick meeting for this difficulty. How? At Emma street on Sunday was a conspiracy meeting of these in-

famous scoundrels, seeking our lives, seeking the destruction of the law, and Fischer was there. What did they agree upon? They agreed upon the plan; they agreed upon "Ruhe;" they agreed that the meeting of the armed men should be called for Tuesday night. It is in the line of this conspiracy that the first meeting on that Sunday night contemplated the difficulties at McCormick's, because where is this Fielden? Where is this German friend, this comrade—where is he? He was down there with Comrade Spies on the top of that car, and their intention was to do that which was done—excite that mob. That was the preliminary step to this conspiracy, to the open infraction of law. The conspiracy had been going along for weeks, perhaps for months; it may be for years. But the conspiracy was arranged at the Emma street meeting. Then comes the McCormick meeting, the inflaming of the workingman, and then—what? The production of the "Revenge" circular to still more incite them. The armed men meet, and at that Emma street meeting—the Northwest Group, mind you; the group that the worst Anarchists in the city belonged to—at that Emma street meeting it was discussed, talked about, and suggested. As I remember, at that meeting—if I am mistaken about that I will be corrected—at that meeting it was arranged and talked about as to where and how the fighting should be done when the contest came. How was it to be done? One man suggested that they should go into the crowd themselves and begin killing then and there. Another says: "That won't do; we may come in contact with the policemen, or a detective, and our lives"—yes, their precious lives—"might be at stake." That plan was rejected—that part of it. That would not do. And another thing; you will remember that it was arranged that the meeting should not be on the Market square, down here on the south side, because it was a mouse trap; because the power of the police, the militia, and everything of that character was such that it was impossible to get out of the way if the contest came. Courageous men! Foster complains that we have not produced in court bombs

enough. We have put in here in proof dynamite bombs enough to have ruined our beautiful city, if they had been used. And I said to him that I would quote from newspapers. I will quote what is true, weekly, not daily; I am making no extravagant statement here—but weekly since the 4th of May have bombs been found scattered in the north and west and southwest parts of the city, and they will continue to be found.

*Mr. Black.* Your Honor, please, there is no evidence of that.

The COURT. The only ground upon which Mr. Grinnell can claim any right to put that in is upon a sort of bargain between him and Mr. Foster, and that bargain is not one that the defendants are bound by.

*Mr. Grinnell.* All right; I will skip it. There were bombs enough presented here. There has been no denial of them. You have heard about the house where Lingg lived, the tearing of part of it down for the purpose of hiding bombs, and, finally, the hot work Mrs. Seliger made for him, and his running away, his being detected and found to be the maker of the bombs—ah, the maker of the bomb that killed the officers, as the proof in this case shows; the making of the bomb which is not disputed except by theory and nothing else. Mr. Foster, in his argument, admits that Lingg made the bombs. He admitted, also, that one statement of Engel in regard to the machine that he got was a little fishy.

A word, gentlemen, only a word, about the breaking up of that meeting. They have played Mr. Harrison in and out of this case, for the purpose of saving the defendants. Mr. Harrison, you remember, went there for the purpose of ascertaining if that meeting was organized to attack the freight house of the Milwaukee & St. Paul, about which you remember there was some difficulty, or McCormick's, if it was called to attack any particular place. He found from the speeches, that although inflammatory, and he said so—from the speeches themselves he found that no particular place was pointed out for an attack. It was the same old speeches, riot, bloodshed, the black flag, the red flag, dynamite, war, to

arms. And counsel upon the other side say that "to arms, to arms," didn't mean anything, it was Pickwickian, to round a sentence. They went down to that meeting and Mr. Harrison was there, and saw that meeting and heard these speeches, and reported back to Bonfield what had been the result, namely, that they had ceased to become inflammatory since they had seen his face; and Mr. Black tells you that Mr. Harrison stayed there until the speeches were all through or Parsons' speech was through. That is not so. He hadn't then uttered his words, "to arms, to arms."

What does Mayor Harrison do? Thinking that the meeting was organized for plunder at the freight house, hearing the speeches, seeing them become more moderate, he leaves, and after he is gone then come the reports to him; the incendiary character still increased, and when they come they come in such a shape that if Bonfield had not gone down there, then and there, he would have failed to perform his duty.

Did Fielden shoot? I think so. If he did not, he is made of poorer clay than I take him to be. He has been saying for years the bloodhounds of the police should be massacred and killed. He it is that said he would march with the black flag down Michigan avenue and strike terror to the hearts of the capitalists; he it is who has said day in and day out since his living in this inhospitable country, which he hates, and so since he has been living here he has always preached death to the police and the capitalists—the despoilers, our despoilers—death to them. Why, do you mean to have us say that he would not do what he says he would do? One swears that he told him he was shot when he was down on the pavement, and he has not denied it. That is a significant fact, gentlemen, a very significant fact. The officer who was shot thinks it was by Fielden. It may have been by somebody else; nobody can tell. One of the officers swears that he was wounded in the knee.

The bomb was thrown in furtherance of a common design, no matter who threw it. But the gentlemen say that there

can be no conviction in this case because we have failed to prove, or cannot prove who threw that identical bomb. That is not the law, as I explained to you yesterday. The other question then is, is there anything in this case showing who did? Gilmer says that he was in the alley and a match was lighted, and that bomb was thrown by one man; Fischer stood by and that Spies lighted it. Is that remarkable? Spies had been advising the doing of that thing for years; and in one of the articles that has been read to you over his own signature he said: "Take as few people into your confidence as possible; do it alone, if possible, in your revolutionary deeds; do it alone, but if you have to consult anybody take your nearest friend, a man you can rely upon." Who is Schnaubelt? Schwab's brother-in-law. Who is Fischer? A man who got the meeting up at Spies' instance, and worked for Spies—in that alley. Now, gentlemen, I presume, and I have no doubt but what if they had raked a little more carefully we could have found the man that said that that bomb was thrown from the top of Crane's building; you could have found the man that said that it came from away in the alley; any number of men probably would have put it north of the alley, and some south. The question here is about where did it come from? The explanation of street warfare as to where, is, that it is to be done near alleys. Is Spies so craven now, after the deed is done, that he shall say: "I had no hand in it," when he has advised it for years? Gentlemen, men's lives speak for themselves. He has advised it, said it, talked it, acted it. Why, the witnesses say, counsel upon the other side say to you, "Gentlemen, it is impossible that this man would do it, because nobody saw that light; that it flashed up in their faces." Why, gentlemen, they put two witnesses on the stand to swear distinctly and early and positively that they had lighted a match and lighted a pipe, which would take a good deal longer than lighting a fuse. Spies says in one article: "It never goes out in a dry night; the Anarchist fuse never fails." It could have happened; it has been advised to hap-

pen precisely as Gilmer states it. Ignore Gilmer and the case is made. But they want you to ignore Thompson, too. Why? What for? Because he heard Spies and Schwab talk together. Was there anything marvelous in that? Had they said anything there together that they had not been saying in public for years? But, supposing you ignore Thompson's testimony and say that Thompson is mistaken, then it was Schnaubelt, wasn't it? Why was Spies so confidential with Schnaubelt that night? Where is Schnaubelt? He is the man that was arrested before the conspiracy was known and let go; shaved his whiskers off, changed his appearance, and he has not been seen since. Why was Spies so confidential with Schnaubelt? He says he did walk with him; says that Henry Spies walked behind him.

I have gone over this case perhaps more extensively than I intended, more perhaps than you desired to listen to; I am through. Your duty is about to begin. I felt relieved when you were selected. Some of the great responsibility that had rested upon my shoulders I felt I could place upon yours. It has been placed there. Gentlemen, the responsibility is great. You have to answer yourselves under your oaths to the people of this State, not to me. My duty is performed, and yours begins, and in this connection, gentlemen, let me suggest to you another reason why it is important that you should be careful. You can acquit them all, one or none; you can parcel the penalties out as you please; to some you can administer the extreme penalty of the law; to others less than that, if you desire. Some you can give life to, if you desire; some years of punishment to.

I have a word to say in this connection about Neebe. The testimony has been analyzed, the testimony in regard to his connection with the *Arbeiter Zeitung* office, his connection with these people from time to time, the evidence that when he saw the dynamite in the *Arbeiter Zeitung* office on that morning when it was discovered there, which these men so infamously suggest was put there by the police; but I have not argued that question. It looks so insulting to a man's

intelligence. What did Neebe say about the dynamite? Why, he said it was stuff to clean type with, he guessed; and he circulated not two circulars but a lot of them. Gentlemen, I am not here to ask you to take the life of Oscar Neebe on this proof. I shall ask you to do nothing in this case that I feel I would not do myself were I seated in your chairs.

This case is greater than us all, more important to the country than you can conceive; the case itself and what it involves is more important than all the lives of the unfortunate officers who bit the dust that night in the defense of our laws.

Some of these people we sincerely and honestly believe should receive at your hands the extreme penalty of the law. Spies, Fischer, Lingg, Engel, Fielden, Parsons, Schwab, Neebe, in my opinion, based upon the proof, is the order of punishment. It is for you to say what it shall be. You have been importuned, gentlemen, to disagree. Don't do that; don't do that. If, in your judgment, in the judgment of some of you, some of these men should suffer death, and others think a less punishment would subserve the law, don't stand on that, but agree on something. It is no pleasant task for me to ask the life of any man. Personally I have not a word to say against these men. As a representative of the law I say to you, the law demands now here its power. Regardless of me, of Foster, of Black, or of us all, that law which in the exponents of anarchy killed Lincoln and Garfield, that law which has made us strong today and which you have sworn to obey, demands of you a punishment of these men. Don't do it because I ask you. Do it, if it should be done, because the law demands it. We may never meet again, gentlemen. I hope I shall see you often hereafter. In the peculiar walks of life in a large city few meet frequently. In this case I have been pleased with you and your acquaintance. It would be a pleasure to meet hereafter. I hope that I have done nothing to offend you, either as to propriety, decency, good sense, or anything else. If we part here, we part as friends. You stand between the

living and the dead. You stand between law and violated law. Do your duty courageously, even if that duty is an unpleasant and a severe one. Gentlemen, I thank you most sincerely for the kind attention that you have given to me these many hours.

*August 19.*

#### THE INSTRUCTIONS TO THE JURY.

JUDGE GARY. Gentlemen of the jury: The statute requires that instructions by the Court to the jury shall be in writing, and only relate to the law of the case.

The practice under the statute is that the counsel prepare on each side a set of instructions and present them to the Court, and, if approved, to be read by the Court as the law of the case. It may happen, by reason of the great number present and the hurry and confusion of passing on them in the midst of the trial, with a large audience to keep in order, that there may be some apparent inconsistency in them, but if they are carefully scrutinized such inconsistencies will probably disappear. In any event, however, the gist and pith of all is that if advice and encouragement to murder was given, if murder was done in pursuance of and materially induced by such advice and encouragement, then those who gave such advice and encouragement are guilty of the murder. Unless the evidence, either direct or circumstantial, or both, proves the guilt of one or more of the defendants upon this principle so fully that there is no reasonable doubt of it, your duty to them requires you to acquit them. If it does so prove, then your duty to the State requires you to convict whoever is so proved guilty. The case of each defendant should be considered with the same care and scrutiny as if he alone were on trial. If a conspiracy, having violence and murder as its object, is fully proved, then the acts and declarations of each conspirator in furtherance of the conspiracy are the acts and declarations of each one of the conspirators. But the declarations of any conspirator before or



after the 4th of May which are merely narrative as to what had been or would be done, and not made to aid in carrying into effect the object of the conspiracy, are only evidence against the one who made them.

What are the facts and what is the truth the jury must determine from the evidence, and from that alone. If there are any unguarded expressions in any of the instructions which seem to assume the existence of any facts, or to be any intimation as to what is proved, all such expressions must be disregarded, and the evidence only looked to to determine the facts.

If all of the defendants are found guilty, the form of the verdict will be:

We the jury find the defendants guilty of murder in manner and form as charged in the indictment, and fix the penalty.

If all are found not guilty, the form of the verdict will be:

We the jury find the defendants not guilty.

If part of the defendants are found guilty, and part not guilty, the form of the verdict will be:

We the jury find the defendant or defendants (naming him or them) not guilty; we find the defendant or defendants (naming him or them) guilty of murder in manner and form as charged in the indictment, and fix the penalty.

The following instructions, asked by the prosecution, I give to you:

1. The Court instructs the jury, in the language of the statute, that murder is the unlawful killing of a human being in the peace of the people, with malice aforethought, either expressed or implied. An unlawful killing may be perpetrated by poisoning, striking, starving, drowning, stabbing, shooting, or by any other of the various forms or means by which human nature may be overcome, and death thereby occasioned. Express malice is that deliberate intention unlawfully to take away the life of a fellow-creature which is manifested by external circumstances capable of proof. Malice shall be implied when no considerable provocation appears, or when all the circumstances of the killing show an abandoned and malignant heart,

5a. If these defendants, or any two or more of them, conspired together with or not with any other person or persons to excite the people or classes of the people of this city to sedition, tumult and riot, to use deadly weapons against and take the lives of other persons, as a means to carry their designs and purposes into effect, and in pursuance of such conspiracy, and in furtherance of its objects, any of the persons so conspiring publicly, by print or speech, advised or encouraged the commission of murder without designating time, place or occasion at which it should be done, and in pursuance of, and induced by such advice or encouragement, murder was committed, then all of such conspirators are guilty of such murder, whether the person who perpetrated such murder can be identified or not. If such murder was committed in pursuance of such advice or encouragement, and was induced thereby, it does not matter what change, if any, in the order or condition of society, or what, if any, advantage to themselves or others the conspirators proposed as the result of their conspiracy, nor does it matter whether such advice and encouragement had been frequent and long continued or not, except in determining whether the perpetrator was or was not acting in pursuance of such advice or encouragement, and was or was not induced thereby to commit the murder. If there was such conspiracy as in this instruction is recited, such advice or encouragement was given, and murder committed in pursuance of and induced thereby, then all such conspirators are guilty of murder. Nor does it matter, if there was such a conspiracy, how impracticable or impossible of success its end and aims were, nor how foolish or ill-arranged were the plans for its execution, except as bearing upon the question whether there was or was not such conspiracy.<sup>17</sup>

destruction of such authorities had not been definitely agreed upon by the conspirators, but was left to them and the exigencies of time or to the judgment of any of the conspirators."

It is said that there was no evidence in the record to support the hypothesis contained in the quotation here made. We think there was such evidence. The hypothesis is that the time and place for bringing about the destruction of the authorities was left to the judgment of some of the conspirators, instead of being definitely agreed upon by all of them. The publication of the word "Ruhe" in the *Arbeiter Zeitung* was to indicate the time for the social revolution to begin, and for the armed men to gather at their meeting places. Its publication was left to the judgment and discretion of a committee appointed by the conspirators. This committee was also to report to the armed men at what place the conflict with the police had occurred.

<sup>17</sup> In affirming the conviction, the Supreme Court say: Instruction No. 5a, will not be found to be so general in character as it is claimed to be, if its language is carefully analyzed and considered in connection with other instructions given for the State.

The persons referred to therein as being excited to tumult and

6. The Court instructs the jury that a conspiracy may be established by circumstantial evidence the same as any other fact, and that such evidence is legal and competent for that purpose. So also whether an act which was committed was done by a member of the conspiracy, may be established by circumstantial evidence, whether the identity of the individual who committed the act be established or not; and also whether an act done was in pursuance of the common design may be ascertained by the same class of evidence, and if the jury believe from the evidence in this case beyond a reasonable doubt that the defendants or any of them conspired and agreed together or with others to overthrow the law by force, or destroy

riot, and to the use of deadly weapons, and to the taking of life, are "the people or classes of people of this city." The expression is in the alternative, "Classes of people of this city," are words which, when construed in the light of the evidence in this record, could only have been understood to designate workingmen of the city of Chicago, connected with the groups already referred to. The persons advised by print or speech to commit murder were the same persons who were excited to tumult and riot, etc. Therefore, the instruction, fairly interpreted, means that the persons advised to commit murder were the workingmen belonging to and acting with the International groups, and that the murder spoken of as resulting from the advice given was murder committed by one or more of such workingmen. It is said that the instruction does not indicate the murder of Degan, but speaks simply of murder generally. It was not necessary to repeat the name of Degan in every instruction. The instructions must be considered together; and, as Degan's name was mentioned in the two instructions preceding, and the one following, No. 5a, the jury could not have been misled upon this subject. The words, "whether the person who perpetrated such murder can be identified or not," could have referred to no one else than the man who threw the bomb that killed Degan.

The words, "without designating time, place, or occasion," must be taken with the qualification given to them in the fifth instruction; that is to say, such time, place, and occasion as the committee of the conspirators appointed for that purpose might designate.

According to the theory of this instruction, the defendants conspired to excite certain classes to tumult, riot, use of weapons, and taking of life, "as a means to carry their designs and purposes into effect." The instruction does not specify what those designs and purposes are, because they had been stated in the two preceding instructions to be bringing about of a social revolution and the destruction of the authorities of the city. The ordinary workingman had two purposes in view (1) to get an eight-hour day of labor; (2) to keep the police from interfering to protect non-union laborers against strikers. The defendants in this case cared nothing about the eight-hour movement or the contention between union and non-union men. They looked beyond to the social revo-

5a. If these defendants, or any two or more of them, conspired together with or not with any other person or persons to excite the people or classes of the people of this city to sedition, tumult and riot, to use deadly weapons against and take the lives of other persons, as a means to carry their designs and purposes into effect, and in pursuance of such conspiracy, and in furtherance of its objects, any of the persons so conspiring publicly, by print or speech, advised or encouraged the commission of murder without designating time, place or occasion at which it should be done, and in pursuance of, and induced by such advice or encouragement, murder was committed, then all of such conspirators are guilty of such murder, whether the person who perpetrated such murder can be identified or not. If such murder was committed in pursuance of such advice or encouragement, and was induced thereby, it does not matter what change, if any, in the order or condition of society, or what, if any, advantage to themselves or others the conspirators proposed as the result of their conspiracy, nor does it matter whether such advice and encouragement had been frequent and long continued or not, except in determining whether the perpetrator was or was not acting in pursuance of such advice or encouragement, and was or was not induced thereby to commit the murder. If there was such conspiracy as in this instruction is recited, such advice or encouragement was given, and murder committed in pursuance of and induced thereby, then all such conspirators are guilty of murder. Nor does it matter, if there was such a conspiracy, how impracticable or impossible of success its end and aims were, nor how foolish or ill-arranged were the plans for its execution, except as bearing upon the question whether there was or was not such conspiracy.<sup>17</sup>

destruction of such authorities had not been definitely agreed upon by the conspirators, but was left to them and the exigencies of time or to the judgment of any of the conspirators."

It is said that there was no evidence in the record to support the hypothesis contained in the quotation here made. We think there was such evidence. The hypothesis is that the time and place for bringing about the destruction of the authorities was left to the judgment of some of the conspirators, instead of being definitely agreed upon by all of them. The publication of the word "Ruhe" in the *Arbeiter Zeitung* was to indicate the time for the social revolution to begin, and for the armed men to gather at their meeting places. Its publication was left to the judgment and discretion of a committee appointed by the conspirators. This committee was also to report to the armed men at what place the conflict with the police had occurred.

<sup>17</sup> In affirming the conviction, the Supreme Court say: Instruction No. 5a, will not be found to be so general in character as it is claimed to be, if its language is carefully analyzed and considered in connection with other instructions given for the State.

The persons referred to therein as being excited to tumult and

6. The Court instructs the jury that a conspiracy may be established by circumstantial evidence the same as any other fact, and that such evidence is legal and competent for that purpose. So also whether an act which was committed was done by a member of the conspiracy, may be established by circumstantial evidence, whether the identity of the individual who committed the act be established or not; and also whether an act done was in pursuance of the common design may be ascertained by the same class of evidence, and if the jury believe from the evidence in this case beyond a reasonable doubt that the defendants or any of them conspired and agreed together or with others to overthrow the law by force, or destroy

riot, and to the use of deadly weapons, and to the taking of life, are "the people or classes of people of this city." The expression is in the alternative, "Classes of people of this city," are words which, when construed in the light of the evidence in this record, could only have been understood to designate workmen of the city of Chicago, connected with the groups already referred to. The persons advised by print or speech to commit murder were the same persons who were excited to tumult and riot, etc. Therefore, the instruction, fairly interpreted, means that the persons advised to commit murder were the workmen belonging to and acting with the International groups, and that the murder spoken of as resulting from the advice given was murder committed by one or more of such workmen. It is said that the instruction does not indicate the murder of Degan, but speaks simply of murder generally. It was not necessary to repeat the name of Degan in every instruction. The instructions must be considered together; and, as Degan's name was mentioned in the two instructions preceding, and the one following, No. 5a, the jury could not have been misled upon this subject. The words, "whether the person who perpetrated such murder can be identified or not," could have referred to no one else than the man who threw the bomb that killed Degan.

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the legal authorities of this city, county or State by force, and that in furtherance of the common design, and by a member of such conspiracy, Mathias J. Degan was killed, then these defendants, if any, whom the jury believe from the evidence, beyond a reasonable doubt, were parties to such conspiracy, are guilty of the murder of Mathias J. Degan, whether the identity of the individual doing the killing be established or not, or whether such defendants were present at the time of the killing or not.

7. The jury are instructed, as a matter of law, that all who take part in the conspiracy after it is formed, and while it is in execution, and all who with knowledge of the facts concur in the plan originally formed, and aid in executing them, are fellow-conspirators. Their concurrence without proof of an agreement to concur is conclusive against them. They commit the offense when they become parties to the transaction or further the original plan with knowledge of the conspiracy.

8. The Court instructs the jury, as a matter of law, that circumstantial evidence is just as legal and just as effective as any other evidence, provided the circumstances are of such a character and force as to satisfy the minds of the jury of the defendants' guilt beyond a reasonable doubt.

9. The Court instructs the jury that what is meant by circumstantial evidence in criminal cases is the proof of such facts and circumstances connected with or surrounding the commission of the crime charged as tend to show the guilt or innocence of the party charged. And if those facts and circumstances are sufficient to satisfy the jury of the guilt of the defendants beyond a reasonable doubt, then such evidence is sufficient to authorize the jury in finding the defendants

lution. They sought to make use of the excitement among the workmen over the eight-hour movement, and over the attacks of police upon strikers, in order to create riot and tumult, and thus precipitate the social revolution. The stirring up of riot and tumult was with them a means to an end. There is testimony tending to support this view. The men who excited the tumult and riot by print and speech may have had a different end in view from that sought by the classes whom they so excited. But they were none the less responsible for murder that resulted from their aid and encouragement.

If the defendants, as a means of bringing about the social revolution, and as a part of the larger conspiracy to effect such revolution, also conspired to excite classes of workmen in Chicago into sedition, tumult, and riot, and to the use of deadly weapons and the taking of human life, and, for the purpose of producing such tumult, riot, use of weapons, and taking of life, advised and encouraged such classes by newspaper articles and speeches to murder the authorities of the city, and a murder of a policeman resulted from such advice and encouragement, then defendants are responsible therefor.

guilty. The law exacts the conviction wherever there is sufficient legal evidence to show the defendants' guilt beyond a reasonable doubt, and circumstantial evidence is legal evidence.

10. The Court instructs the jury, as a matter of law, that when the defendants August Spies, Michael Schwab, Albert R. Parsons and Samuel Fielden testified as witnesses in this case, each became the same as any other witness, and the credibility of each is to be attested by and subjected to the same tests as are legally applied to any other witness; and in determining the degree of credibility that shall be accorded to the testimony of any one of said above-named defendants, the jury have a right to take into consideration the fact that he is interested in the result of this prosecution, as well as his demeanor and conduct upon the witness stand during the trial, and the jury are also to take into consideration the fact, if such is the fact, that he has been contradicted by other witnesses. And the Court further instructs the jury that if, after considering all the evidence in this case, they find that any one of said defendants August Spies, Michael Schwab, Albert R. Parsons and Samuel Fielden has willfully and corruptly testified falsely to any fact material to the issue in this case, they have the right to entirely disregard his testimony, except in so far as his testimony is corroborated by other credible evidence.

11. The rule of law which clothes every person accused of crime with the presumption of innocence, and imposes upon the State the burden of establishing his guilt beyond a reasonable doubt, is not intended to aid any one who is in fact guilty of crime to escape, but is a humane provision of law, intended, so far as human agencies can, to guard against the danger of any innocent person being unjustly punished.

12. The Court instructs the jury, as a matter of law, that in considering the case the jury are not to go beyond the evidence to hunt up doubts, nor must they entertain such doubts as are merely chimerical or conjectural. A doubt, to justify an acquittal, must be reasonable, and it must arise from a candid and impartial investigation of all the evidence in the case, and unless it is such that, were the same kind of doubt interposed in the graver transactions of life, it would cause a reasonable and prudent man to hesitate and pause, it is insufficient to authorize a verdict of not guilty. If, after considering all the evidence, you can say you have an abiding conviction of the truth of the charge, you are satisfied beyond a reasonable doubt.

13. The Court further instructs the jury, as a matter of law, that the doubt which the juror is allowed to retain on his own mind, and under the influence of which he should frame a verdict of not guilty, must always be a reasonable one. A doubt produced by undue sensibility in the mind of any juror, in view of the consequences of his verdict, is not a reasonable doubt, and a juror is not allowed to create sources or materials of doubt by resorting to trivial and fanciful suppositions and remote conjectures as to possible states of

fact differing from that established by the evidence. You are not at liberty to disbelieve as jurors if from the evidence you believe as men; your oath imposes on you no obligation to doubt where no doubt would exist if no oath had been administered.

13a. The Court instructs the jury that they are the judges of the law as well as the facts in this case, and if they can say, upon their oaths, that they know the law better than the Court itself, they have the right to do so; but before assuming so solemn a responsibility, they should be assured that they are not acting from caprice or prejudice, that they are not controlled by their will or their wishes, but from a deep and confident conviction that the Court is wrong and that they are right. Before saying this, upon their oaths, it is their duty to reflect whether, from their study and experience, they are better qualified to judge of the law than the Court. If, under all the circumstances, they are prepared to say that the Court is wrong in its exposition of the law, the statute has given them that right.

14. In this case the jury may, as in their judgment the evidence warrants, find any or all of the defendants guilty or not, or all of them not guilty; and if, in their judgment, the evidence warrants, they may, in case they find the defendants, or any of them, guilty, fix the same penalty for all the defendants found guilty, or different penalties for the different defendants found guilty. In case they find the defendants, or any of them, guilty of murder, they should fix the penalty either at death or at imprisonment in the penitentiary for life, or at imprisonment in the penitentiary for a term of any number of years, not less than fourteen.

The following instructions, asked for by the defense, I give to you:

1. The jury in a criminal case are the judges of the law and the evidence, and have to act according to their best judgment of such law and the facts. The jury have a right to disregard the instructions of the Court, provided they can say upon their oaths that they believe they know the law better than the Court.

2. The law presumes the defendants innocent of the charge in the indictment until the jury are satisfied by the evidence, beyond all reasonable doubt, of the guilt of the defendants. If a reasonable doubt of any facts, necessary to convict the accused, is raised in the minds of the jury by the evidence itself, or by the ingenuity of counsel upon any hypothesis reasonably consistent with the evidence, that doubt is decisive in favor of the prisoners' acquittal. A verdict of not guilty simply means that the guilt of the accused has not been demonstrated in the precise, specific and narrow forms prescribed by the law. No jury should convict anybody of crime upon mere suspicion, however strong, or because there is a preponderance of all the evidence against him, but the jury must be convinced of the defendant's guilt, beyond all reasonable doubt, before they can lawfully convict. The law does not require the de-



defendants to prove themselves innocent, but the burden of proof that they are guilty beyond all reasonable doubt is upon the prosecution. The indictment is of itself a mere accusation and no proof of the guilt of the defendants. The presumption of the innocence of the defendants is not a mere form, but an essential, substantial part of the law of the land, and it is the duty of the jury to give the defendants the full benefit of this presumption in this case. It is incumbent upon the prosecution to prove beyond all reasonable doubt every material allegation in the indictment, and unless that has been done, the jury should find the defendants not guilty.

4. The burden is upon the prosecution to prove by credible evidence, beyond all reasonable doubt, that the defendants are guilty as charged in the indictment of the murder of Mathias J. Degan; it is the duty of the jury to acquit any of the defendants as to whom there is a failure of such proof. The jury are not at liberty to adopt any unreasonable theories or suppositions in considering the evidence in order to justify a verdict of conviction. A reasonable doubt is that state of mind in which the jury, after considering all the evidence, cannot say they feel an abiding faith, amounting to a moral certainty, from the evidence in the case, that the defendants are guilty as charged in the indictment.

5. The rules of evidence as to the amount of evidence in this case are different from those in a civil case; a mere preponderance of evidence would not warrant a verdict of guilty. Mere probability of the defendants' guilt is not sufficient to warrant a conviction. Your personal opinions as to facts not proved cannot be the basis of your verdict, but you must form your verdict from the evidence, and that alone, unaided and uninfluenced by any opinions or presumptions not founded upon the evidence.

6. The jury are the sole judges of the credibility of witnesses, and in passing thereon may consider their prejudices, motives or feelings of revenge, if any such have appeared, and if the jury believe from the evidence that any witness has knowingly or willfully testified falsely as to any material fact, they may disregard his entire testimony, unless it is corroborated by other credible evidence.

7. If one single fact is proved by a preponderance of the evidence which is inconsistent with the guilt of a defendant, this is sufficient to raise a reasonable doubt as to his guilt and entitles him to an acquittal. In order to justify the inference of legal guilt from circumstantial evidence, the existence of the inculpatory facts must be absolutely incompatible with the innocence of the accused upon any rational theory.

10. The witnesses Gottfried Waller and Wilhelm Seliger are accomplices, and while a person accused of crime may be convicted upon the uncorroborated testimony of an accomplice, still the jury should weigh it with great care and caution, and convict upon it only if they are satisfied beyond any reasonable doubt of its truth. If you believe from the evidence that the witnesses Gottfried Wal-

ler and Wilhelm Seliger were induced to become witnesses by any promise of immunity from punishment, or by any hope held out to them, that it would go easier with them in case they disclosed who their confederates were, or in case they implicated some one else in the crime, then you should take such facts into consideration in determining the weight to be given to their testimony. Same instruction in regard to the testimony of any other witnesses for the prosecution.

11. The testimony of an accomplice should be subjected to critical examination in the light of all the other evidence.

12. A person charged with crime may testify in his own behalf, but his neglect to do so shall not create any presumption against him.

14. The jury should endeavor to reconcile the testimony of the defendants' witnesses with the belief that all of them endeavored to tell the truth, and you should attribute any contradictions or differences in their testimony to mistake or misrecollection rather than to a willful intention to swear falsely, if you can reasonably do so under the evidence. The jury should fairly and impartially consider the testimony of the defendants, together with all the other evidence.

15. If the verbal admission of a defendant is offered in evidence, the whole of the admission must be taken together, and those parts which are in favor of the defendant are entitled to as much consideration as any other parts, unless disproved, or apparently improbable or untrue, when considered with all the other evidence.

16. It would be improper for the jury to regard any statements of the prosecuting attorneys, not based upon the evidence, as entitled to any weight.

17. If all the facts and circumstances relied on by the People to secure a conviction can be reasonably accounted for upon any theory consistent with the innocence of the defendants, or any of them, then you should acquit such of them as to whom the facts proven can thus be accounted for.

19. It is not enough to warrant the conviction of a person charged with crime that he contemplated the commission of such crime. If any reasonable hypothesis exists that such crime may have been committed by another in no way connected with the defendants, the accused should be acquitted. If the evidence leaves a reasonable doubt of the guilt of the defendants, as charged in the indictment, the jury should acquit, although the evidence may show conduct of no less turpitude than the crime charged.

20. The allusions and references of the prosecuting attorneys to the supposed dangerous character of any views entertained or principles contended for by the accused should in no way influence you in determining this case. Individuals and communities have the legal right to arm themselves for the defense and protection of their persons and property, and a proposition by any person, pub-

liely proclaimed, to arm for such protection and defense, is not an offense against the laws of this State.

21. If the defendants, or some of them, agreed together, or with others, in the event of the workingmen or strikers being attacked, that they (defendants) would assist the strikers to resist such an attack, this would not constitute conspiracy if the anticipated attack was unjustified and illegal, and such contemplated resistance simply the opposing of force wrongfully and illegally exercised, by force sufficient to repel said assault.

25. The burden is not cast upon the defendants of proving that the person who threw the bomb was not acting under their advice, teaching or procurement. Unless the evidence proves beyond all reasonable doubt that either some of the defendants threw said bomb, or that the person who threw it acted under the advice and procurement of defendants or some of them, the defendants should be acquitted. Such advice may not necessarily be special as to the bomb, but general, so as to include it. It is not proper for the jury to guess that the person who threw the bomb was instigated to do the act by the procurement of defendants or any of them. There must be a direct connection established, by credible evidence, between the advice and consummation of the crime, beyond all reasonable doubt. The bomb might have been thrown by some one unfamiliar with, and unprompted by, the teachings of the defendants or any of them. Before defendants can be held liable therefor, the evidence must satisfy you beyond all reasonable doubt that the person throwing said bomb was acting as the result of the teaching or encouragement of defendants or some of them.

26. Before a person charged as accessory to a crime can be convicted, the evidence must prove beyond a reasonable doubt that the crime was committed by some person acting under the advice, aid, encouragement, abetting or procurement of the defendant whose conviction as accessory is sought. Though you may believe from the evidence that a party in fact advised the commission in certain contingencies of acts amounting to crime, yet, if the act complained of was in fact committed by some third party of his own mere volition, hatred, malice or ill-will, and not materially influenced, either directly or indirectly, by such advice of the party charged, or any party for whose advice the defendants are responsible, the party charged would not in such case be responsible.

27. If you find that at a meeting held on the evening of May 3d at 54 West Lake street, at which some of the defendants were present, it was agreed that in the event of a collision between the police, militia or firemen, and the striking laborers, certain armed organizations, of which some of the defendants were members, should meet at certain places in Chicago, that a committee should attend public places and meetings where an attack by the police and others might be expected, and in the event of such attack report the same to said organizations to the end that such attack might be resisted and the police stations of the city destroyed, still, if the evidence does

not prove, beyond all reasonable doubt, that the throwing of the bomb which killed Mathias J. Degan was the result of any act in furtherance of the common design herein stated, and if it may have been the unauthorized and individual act of some person acting upon his own responsibility and volition, then none of the defendants can be held responsible therefor on account of said West Lake street meeting.

The following instructions asked by the defense are refused by the Court:

3. The Court instructs the jury that, in order to convict these defendants, they must not only find that they entered into an illegal conspiracy, and that the Haymarket meeting was an unlawful assembly in aid of said conspiracy, but that, in addition thereto, the bomb by which Officer Degan lost his life was cast by a member of said conspiracy, in aid of the common design, or by a person outside of said conspiracy, aided and advised by all or some one of these defendants; but, in any event, should you find such a conspiracy, from the evidence, to have been in existence, any one or more of these defendants not found beyond a reasonable doubt to have been a member thereof, and who is or are not proved beyond a reasonable doubt to have been present at the Haymarket meeting, or who, if present, did not knowingly counsel, aid, or abet the throwing of the bomb by which Officer Degan lost his life,—such defendant or defendants you are bound to acquit.<sup>18</sup>

8. If the jury believe, from the evidence, that the defendants, or any one of them, entered into a conspiracy to bring about a change of government for the amelioration of the condition of the working classes by peaceful means, if possible, but, if necessary, to resort to force for that purpose, and that, in addition thereto, in pursuance of that object, the Haymarket meeting was assembled by such conspirator or conspirators to discuss the best means to right the grievances of the working classes, without any intention of doing any unlawful act on that occasion, and, while so assembled, the bomb by which Officer Degan lost his life was thrown by a person outside of said conspiracy, and without the knowledge and approval of the defendant or defendants so found to have entered

<sup>18</sup> Said the Supreme Court in affirming the conviction: This instruction (No. 3) was properly refused because it told the jury that those of the defendants who were not present at the Haymarket, counseling, aiding, or abetting the throwing of the bomb, should be acquitted. Under our statute, and the decision of this Court in *Breman v. People*, 15 Ill. 517, the defendants were guilty, if they advised and encouraged the murder to be committed, although they may not have been present.

into said conspiracy,—then and in that case the Court instructs the jury that they are bound to acquit the defendants.<sup>19</sup>

9. The Court instructs the jury that it is not enough to find that the defendants unlawfully conspired to overthrow the present form of government, and that the Haymarket meeting was an unlawful assembly called by these defendants in furtherance of that conspiracy; but you must find, in addition thereto, that the bomb by which Officer Degan lost his life was thrown by a member of said conspiracy, in aid of the common design; or if you should find that it was thrown by a person not proved beyond a reasonable doubt to have been a member of said conspiracy, then you must find that these defendants knowingly aided and abetted or advised such bomb-thrower to do the act; otherwise you are bound to acquit them.

11. The Court further instructs the jury that, unless you find, from the evidence, beyond all reasonable doubt, that there was a conspiracy existing to which the defendants, or some of them, were parties, and that the act resulting in the death of Mathias J. Degan was done by somebody who was a party to said conspiracy, and in pursuance of the common design of said conspiracy, you must find the defendants not guilty, unless the evidence convinces you, beyond all reasonable doubt, that the defendants, or any of them, personally committed the act resulting in the death of Mathias J. Degan, as charged in the indictment, or that the defendants, or any of them, stood by and aided, abetted, or assisted, or, not being present, had advised, aided, encouraged, or abetted the perpetration of the crime charged in the indictment; and then you should find guilty only those defendants as to whom the evidence satisfies you, beyond all reasonable doubt, that they thus committed or aided in the commission of the crime charged in the indictment.

12. If the jury believe, from the evidence in this cause, that the meeting of May 4, 1886, was called for a legal purpose, and, at the time it was ordered to disperse by the police, was being conducted in an orderly and peaceable manner, and was about peaceably to disperse, and that the defendants, or those participating in said meeting, had, in connection therewith, no illegal or felonious purpose or design, then the order for the dispersal thereof was unauthorized, illegal, and in violation of the rights of said assembly and of the people who were then gathered.

13. And if the jury further believe, from the evidence, that the

<sup>19</sup> Said the Supreme Court in affirming the conviction: Instruction No. 8 was wrong for a number of reasons, but it is sufficient to refer to one. It assumes that "a conspiracy to bring about a change of government. . . . by peaceful means if possible, but, if necessary, to resort to force for that purpose," is not unlawful. The fact that the conspirators may not have intended to resort to force, unless, in their judgment, they should deem it necessary to do so, would not make their conspiracy any the less unlawful.

meeting was a quiet and orderly meeting, lawfully convened, and that the order for its dispersal was unauthorized and illegal, under the provisions of the Constitution of this State referred to, and that, upon such order being given, some person in said gathering, without the knowledge, aid, counsel, procurement, encouragement, or abetting of the defendants, or any of them, then or theretofore given, and solely because of his own passion, fear, hatred, malice, or ill will, or in pursuance of his view of the right of self-defense, threw a bomb among the police, wherefrom resulted the murder or homicide charged in the indictment—then the defendants would not be liable for the results of such bomb, and your verdict should be “not guilty.”<sup>20</sup>

18. Although certain of the defendants may have advised the use of force in opposition to the legally constituted authorities, or the overthrow of the laws of the land, yet, unless the jury can find, beyond all reasonable doubt, that they specifically threw the bomb which killed Degan, or aided, advised, counseled, assisted, or encouraged said act, or the doing of some illegal act, or the accomplishment of some act by illegal means, in the furtherance of which said bomb was thrown, you should return said defendants not guilty.

22. The fact—if such is the fact—that the defendant Neebe circulated or distributed or handled a few copies of the so-called “revenge circular,” and, while doing so, said substantially: “Six workmen have been killed at McCormick’s last night, by the police; perhaps the time will come when it may go the other way,”—is not of itself sufficient to connect him with the killing of Degan; nor is the fact that he had in his house a red flag, a gun, a revolver, and a sword, sufficient, even when taken together with the other statement contained in this construction, to connect said Neebe with the act which resulted in the death of Degan, as charged in this indictment.

<sup>20</sup> Said the Supreme Court in affirming the conviction: The refusal of this instruction was not error. It was proper enough, so far as it stated that if a person at the Haymarket, “without the knowledge, aid, counsel, procurement, or abetting of the defendants or any of them, then or theretofore given, . . . threw a bomb among the police, whereupon resulted the murder charged in the indictment, then the defendants would not be liable for the result of such bombs,” etc. But the instruction is so ingeniously worded as to lead the jury to believe the person who threw the bomb at the Haymarket was justified in doing so, if the meeting there was lawfully convened and peaceably conducted, and if the order to disperse was unauthorized and illegal. And counsel inject into the instruction the hypothesis that the bomb may have been thrown by an outside party “in pursuance of his view of the right of self-defense.”

23. There has not been introduced any evidence to show that defendant Neebe advised or encouraged the throwing of the bomb.

24. The jury are instructed to return a verdict of not guilty as to Neebe.

24a. It is not material that defendant or some of them are or may be Socialists, Communists or Anarchists.<sup>21</sup>

*Mr. Black.* The Court has not instructed the jury in regard to manslaughter.

JUDGE GARY. Gentlemen, manslaughter is the unlawful killing by a human being, without malice, expressed or implied, and without any mixture of deliberation whatever. It must be voluntary, upon a sudden heat of passion, caused by a provocation sufficient to make the passion irresistible, or involuntary, in the commission of an unlawful act, or a lawful act without due caution or circumspection. The punishment is imprisonment in the penitentiary for life or for any number of years, to be fixed by a jury by verdict, or, on a plea of guilty, by the judge.

At 3:30 p. m. the jury retired and the Court adjourned.

### THE VERDICT.

*August 20.*

The Court opened at 10 a. m. and the *Jury* entered and took their places.

JUDGE GARY. All spectators, every one, except the officers of the Court, must be seated and every one must preserve ab-

<sup>21</sup>Said the Supreme Court in affirming the conviction: If there was a conspiracy, it was material to show its purposes and objects with a view of determining whether and in what respects it was unlawful. Anarchy is the absence of government; it is a state of society where there is no law or supreme power. If the conspiracy had for its object the destruction of the law and the government, and of the police and militia, as the representatives of law and government, it had for its object the bringing about of practical anarchy. Whether or not the defendants were anarchists may have been a proper circumstance to be considered in connection with all the other circumstances in the case, with a view of showing what connection, if any, they had with the conspiracy, and what were their purposes in joining it. Therefore, we cannot say that it was an error to refuse an instruction containing such a broad declaration as that announced in the above quotation.

solite silence. Gentlemen, have you agreed upon your verdict?

*Foreman Osborne.* We have.

JUDGE GARY. Have you written it out?

*Foreman Osborne.* We have (handing a paper to the clerk).

*Clerk Doyle* (reading): We, the jury, find the defendants, August Spies, Michael Schwab, Samuel Fielden, Albert R. Parsons, Adolph Fischer, George Engel and Louis Lingg guilty of murder in the manner and form as charged in the indictment, and fix the penalty at death.

We find the defendant, Oscar W. Neebe, guilty of murder in manner and form as charged in the indictment, and fix the penalty at imprisonment for fifteen years.

*Mr. Black.* I ask that the jury be polled.

JUDGE GARY. Each juror, as his name is called, will stand up and answer the question which will be asked him.

In response to the question of the *Clerk*: "Mr. —, was this and is this your verdict?" each juror arose in his place and responded: It is.

*Mr. Black.* We desire to make a motion for a new trial on behalf of the defendants.

*Mr. Grinnell.* I suppose, on the entry of a motion for a new trial, and the impossibility and inability, in fact, to dispose of that motion during the present term, the hearing of the motion had better be continued until the next term.

*Mr. Black.* Yes, we will agree to that. That will be until the September term.

JUDGE GARY. Let the motion be entered and continued until the next term, and let the defendants be taken back to the jail.

The prisoners passed out in charge of the deputies.

JUDGE GARY. Gentlemen of the jury, you have finished this long and very arduous trial, which has required a very considerable sacrifice of time and some hardship. I hope that everything has been done that could possibly be done to make this sacrifice and hardship as mild as might be permitted. It does not become me to say anything in regard to the case that you have tried or the verdict you have rendered, but men compulsorily serving as jurors, as you have done, deserve some recognition of the service you have performed beside the meager compensation you are to receive. You are discharged from further attendance upon this Court. I understand that some carriages are in attendance to convey you from this place.



Certificates for your attendance fees as jurors you can get at any time in the future.

*Mr. Brayton.* I wish to say that the jury have deputed to me the only agreeable duty that it is our province to perform, and that is to thank the Court and the counsel for the defense and for the prosecution for all your kindly care to make us as comfortable as possible during our confinement. We thank you all.

*JUDGE GARY.* I am very grateful for the good opinion you express of me, and I have no doubt the counsel in this case share that feeling with me.

### THE SENTENCES.

*October 7.*

Motions for a new trial and in arrest of judgment were argued by counsel on both sides on October 1. Today they were overruled by JUDGE GARY, who thereupon called upon the prisoners to say why the sentences which had been adjudged by the jury should not be passed upon them by him.

*August Spies.* I speak as the representative of one class to the representative of another. I will begin with the words uttered five hundred years ago, on a similar occasion, by the Venetian Doge Faleri, who, addressing the Court, said, "My defense is your accusation. The cause of my alleged crime is your history." Though I have been found guilty there was no evidence to show that I had any knowledge of the man who threw the bomb, or that I had had anything to do with its throwing. There being no evidence to establish my legal responsibility, the execution of the sentence would be nothing less than willful, malicious and deliberate murder, as foul a murder as may be found in the annals of religious, political or any sort of persecution. The representative of the State had fabricated most of the testimony which was used as a pretense to convict, and all the defendants have been convicted by a jury picked out to convict. I charge, the State's Attorney and Bonfield with the heinous conspiracy to commit murder.

The contemplated murder of eight men, whose only crime is that they have dared to speak the truth, may open the eyes of the suffering millions; may wake them up. Indeed, I have noticed that our conviction has worked miracles in this direction already. The class that clamors for our lives, the good, devout Christians, have attempted in every way, through their newspapers and otherwise, to conceal the true and only issue in this case. By simply designating the defendants as "Anarchists," and picturing them as a newly-discovered species of cannibals, and by inventing shocking and horrifying stories of dark conspiracies said to be planned by them, these good Christians zealously sought to keep the naked fact from the working people and other righteous parties, namely: that

on the evening of May 4 two hundred armed men, under the command of a notorious ruffian, attacked a meeting of peaceable citizens! With what intention? With the intention of murdering them, or as many of them as they could. I refer to the testimony given by two of our witnesses. The wage-workers of this city began to object to being fleeced too much—they began to say some very true things, but they were highly disagreeable to our patrician class; they put forth,—well, some very modest demands. They thought eight hours' hard toil a day, for scarcely two hours' pay, was enough. This lawless rabble had to be silenced! The only way to silence them was to frighten them, and murder those whom they looked up to as their "leaders." Yes, these foreign dogs had to be taught a lesson, so that they might never again interfere with the high-handed exploitation of their benevolent and Christian masters. Bonfield, the man who would bring a blush of shame to the managers of the Bartholomew night—Bonfield, the illustrious gentleman with a visage that would have done excellent service to Dore in portraying Dante's fiends of hell—Bonfield was the man best fitted to consummate the conspiracy of the Citizens' Association of our patricians. If I had thrown that bomb, or had caused it to be thrown, or had known of it, I would not hesitate a moment to state so. It is true a number of lives were lost—many were wounded. But hundreds of lives were thereby saved! But for that bomb there would have been a hundred widows and hundreds of orphans where now there are few. These facts have been carefully suppressed, and we were accused and convicted of conspiracy by the real conspirators and their agents. This, your Honor, is one reason why sentence should not be passed by a Court of justice—if that name has any significance at all.

I have published articles on the manufacture of dynamite and bombs, but what other newspapers in the city had not done the same thing. My only offense is in espousing the cause of "the disinherited and disfranchised millions." What have we said in our speeches and publications? We have interpreted to the people their condition and relations in society. We have explained to them the different social phenomena and the social laws and circumstances under which they occur. We have, by way of scientific investigation, incontrovertibly proved and brought to their knowledge that the system of wages is the root of the present social iniquities—iniquities so monstrous that they cry to heaven. We have further said that the wage system, as a specific form of social development, would, by the necessity of logic, have to make room for higher forms of civilization; that the wage system must prepare the way and furnish the foundation for a social system of co-operation—that is, Socialism. That whether this or that theory, this or that scheme regarding future arrangements were accepted, was not a matter of choice, but one of historical necessity, and that to us the tendency of progress seemed to be Americanism—that is, a free society without kings or classes—a society of sovereigns in

which the liberty and economic equality of all would furnish an unshakable equilibrium as a foundation and condition of natural order.

I may have told that individual who appeared here as a witness that the workingmen should procure arms, as force would in all probability be the *ultima ratio*, and that in Chicago there were so and so many armed men, but I certainly did not say that we proposed to inaugurate the social revolution. And let me say here: Revolutions are no more made than earthquakes and cyclones. Revolutions are the effect of certain causes and conditions. I have made social philosophy a specific study for more than ten years, and I could not have given vent to such nonsense! I do believe, however, that the revolution is near at hand—in fact, that it is upon us. But is the physician responsible for the death of the patient because he foretold that death? If the opinions of the Court are good, there is no person in this country who could not be lawfully hanged.

If you think that by hanging us you can stamp out the labor movement—the movement from which the downtrodden millions, the millions who toil and live in want and misery—the wage slaves—expect salvation—if this is your opinion, then hang us! Here you will tread upon a spark, but there, and there, and behind you and in front of you, and everywhere, flames will blaze up. It is a subterranean fire. You cannot put it out. The ground is on fire upon which you stand. You can't understand it. You don't believe in magical arts, as your grandfathers did, who burned witches at the stake, but you do believe in conspiracies; you believe that all these occurrences of late are the work of conspirators! You resemble the child that is looking for his picture behind the mirror. What you see and what you try to grasp is nothing but the deceptive reflex of the stings of your bad conscience. You want to "stamp out the conspirators"—the agitators? Ah! stamp out every factory lord who has grown wealthy upon the unpaid labor of his employees. Stamp out every landlord who has amassed fortunes from the rent of overburdened workingmen and farmers. Stamp out every machine that is revolutionizing industry and agriculture, that intensifies the production, ruins the producer, that increases the national wealth, while the creator of all these things stands amidst them, tantalized with hunger! Stamp out the railroads, the telegraph, the telephone, steam and yourselves—for everything breathes the revolutionary spirit. You, gentlemen, are the revolutionists. You rebel against the effects of social conditions which have tossed you, by the fair hand of fortune, into a magnificent paradise. Without inquiring, you imagine that no one else has a right in that place. You insist that you are the chosen ones, the sole proprietors. The forces that tossed you into the paradise, the industrial forces, are still at work. They are growing more active and intense from day to day. Their tendency is to elevate all mankind to the same level, to have all humanity share in the paradise

you now monopolize. You, in your blindness, think you can stop the tidal wave of civilization and human emancipation by placing a few policemen, a few Gatling guns and some regiments of militia on the shore—you think you can frighten the rising waves back into the unfathomable depths whence they have arisen, by erecting a few gallows in the perspective. You, who oppose the natural course of things, you are the real revolutionists. You and you alone are the conspirators and destructionists!

It has been said in referring to the Board of Trade demonstration: "These men started out with the express purpose of sacking the Board of Trade building." While I can't see what sense there would have been in such an undertaking, and while I know that the said demonstration was arranged simply as a means of propaganda against the system that legalizes the respectable business carried on there, I will assume that the three thousand workingmen who marched in that procession really intended to sack the building. In this case they would have differed from the respectable Board of Trade men only in this—that they sought to recover property in an unlawful way, while the others sack the entire country lawfully and unlawfully—this being their highly respectable profession. This court of "justice and equity" proclaims the principle that when two persons do the same thing it is not the same thing. I thank the Court for this confession. It contains all that we have taught, and for which we are to be hanged, in a nutshell. Theft is a respectable profession when practiced by the privileged class. It is a felony when resorted to in self-preservation by the other class.

These men, Mr. Grinnell said repeatedly, "have no principle; they are common murderers, assassins, robbers," etc. I admit that our aspirations and objects are incomprehensible to some but surely for this we are not to be blamed. The assertion, if I mistake not, was based on the ground that we sought to destroy property. Whether this perversion of facts was intentional, I know not. But in justification of our doctrines I will say that the assertion is an infamous falsehood. Articles have been read here from the *Arbeiter Zeitung* and *Alarm* to show the dangerous character of the defendants. The files of the *Arbeiter Zeitung* and *Alarm* have been searched for the past years. Those articles which generally commented upon some atrocity committed by the authorities upon striking workingmen were picked out and read to you. Other articles were not read to the Court. Other articles were not what was wanted. The State's Attorney well knows that he tells a falsehood when he says that "these men have no principle."

I had seen Lingg only twice before I was arrested, but had never spoken to him. With Engel I had not been on speaking terms for at least a year, and Fischer had gone about making speeches against me. The article in the *Arbeiter Zeitung* with

reference to the Board of Trade demonstration, I had not seen until I read it in the paper.

Now, if we cannot be directly implicated with this affair, connected with the throwing of the bomb, where is the law that says that "these men shall be picked out to suffer?" Show me that law if you have it! If the position of the Court is correct, then half of this city—half of the population of this city—ought to be hanged, because they are responsible the same as we are for that act on May 4th. And if not half of the population of Chicago is hanged, then show me the law that says, "Eight men shall be picked out and hanged as scapegoats?" You have no good law. Your decision, your verdict, our conviction is nothing but an arbitrary will of this lawless court. It is true there is no precedent in jurisprudence in this case! It is true that we have called upon the people to arm themselves. It is true that we have told them time and again that the great day of change was coming. It was not our desire to have bloodshed. We are not beasts. We would not be Socialists if we were beasts. It is because of our sensitiveness that we have gone into this movement for the emancipation of the oppressed and suffering. It is true that we have called upon the people to arm and prepare for the stormy times before us. This seems to be the ground upon which the verdict is to be sustained. "But when a long train of abuses and usurpation, pursuing invariably the same object, evinces a design to reduce the people under absolute despotism, it is their right, it is their duty, to throw off such government and provide new guards for their future safety." This is a quotation from the "Declaration of Independence." Have we broken any laws by showing to the people how the abuses that have occurred for the last twenty years are invariably pursuing one object, viz.: to establish an oligarchy in this country as strong and powerful and monstrous as never before has existed in any country? I can well understand why that man Grinnell did not urge upon the grand jury to charge us with treason. I can well understand it. You cannot try and convict a man for treason who has upheld the Constitution against those who try to trample it under their feet. It would not have been as easy a job to do that, Mr. Grinnell, as to charge "these men with murder."

Now these are my ideas. They constitute a part of myself. I cannot divest myself of them, nor would I if I could. And if you think that you can crush out these ideas that are gaining ground more and more every day, if you think you can crush them out by sending us to the gallows—if you would once more have people suffer the penalty of death because they have dared to tell the truth—and I defy you to show us where we have told a lie—I say if death is the penalty for proclaiming the truth, then I will proudly and defiantly pay the costly price! Call your hangman! Truth crucified in Socrates, in Christ, in Giordano Bruno, in Huss,

Galileo, still lives—they and others whose number is legion have preceded us on this path. We are ready to follow.

*Michael Schwab.* It is idle and hypocritical to think about justice having been done to us. We engaged in no conspiracy, as all we did was done in open daylight. After the mayoralty election in the spring of 1885, Edwin Lee Brown, president of the Citizens' Association, had urged the people in a public speech, "to take possession of the courthouse by force, even if they had to wade in blood."

I am thinking of the condition of laborers in Chicago, who live in miserable, dilapidated hovels, owned by greedy landlords. What these common laborers are today, the skilled laborer will be tomorrow. Improved machinery, that ought to be a blessing for the workingman, under the existing conditions turns for him to a curse. Machinery multiplies the army of unskilled laborers, makes the laborer more dependent upon the men who own the land and the machines. And that is the reason that Socialism and Communism got a foothold in this country. The outcry that Socialism, Communism and Anarchism are the creed of foreigners, is a big mistake. There are more Socialists of American birth in this country than foreigners, and that is much, if we consider that nearly half of all industrial workingmen are not native Americans. There are Socialistic papers in a great many States, edited by Americans for Americans. The capitalistic newspapers conceal that fact very carefully.

If Anarchy were the thing the State's Attorney makes it out to be, how could it be that such eminent scholars as Prince Krapotkin and the greatest living geographer, Elisee Reclus, were avowed Anarchists, even editors of Anarchistic newspapers? Anarchy is a dream, but only in the present. It will be realized. Reason will grow in spite of all obstacles. Who is the man that has the cheek to tell us that human development has already reached its culminating point? I know that our ideal will not be accomplished this or next year, but I know that it will be accomplished as near as possible, some day in the future. It is entirely wrong to use the word Anarchy as synonymous with violence. Violence is one thing and Anarchy another. In the present state of society violence is used on all sides, and therefore we advocated the use of violence against violence, but against violence only, as a necessary means of defense. I never read Mr. Most's book, simply because I did not find time to read it. And if I had read it, what of it? I am an agnostic, but I like to read the Bible nevertheless. I have not the slightest idea who threw the bomb on the Haymarket, and had no knowledge of any conspiracy to use violence on that or any other night.

*Oscar Neefe.* I have found out during the last few days what law is. Before I didn't know. I, more than all other defendants, except Parsons, ought to have known the law. I admit that I have presided at Socialistic meetings, that I headed the Board of

Trade procession, and I drove to the office of the *Arbeiter Zeitung* after learning on May 5 that Spies and Schwab had been arrested.

My object has been to ameliorate the condition of the working-man, but I did not distribute the "Revenge" circular. I organized the Beer-brewers' Union and attended a meeting at the North Side Turner Hall to announce the result of my conference with the bosses. When I entered the hall, I went on the platform and I presented the union with a document signed by every beer-brewer of Chicago, guaranteeing ten hours' labor and \$65 wages—\$15 more wages per month—and no Sunday work, to give the men a chance to go to church, as many of them are good Christians. There are a good many Christians among them. So, in that way, I was aiding Christianity—helping the men to go to church. After the meeting I left the hall, and stepped into the front saloon, and there were circulars lying there called the "Revenge" circular. I picked up a couple of them from a table and folded them together and put them in my pocket, not having a chance to read them, because everybody wanted to treat me. They all thought it was by my efforts that they got \$15 a month more wages and ten hours a day. Why, I didn't have a chance to read the circulars. From there I went to another saloon across the street, and the president of the Beer-brewers' Union was there; he asked me to walk with him, and on the way home we went into Heine's saloon. He was talking to Heine about the McCormick affair, and I picked up a circular and read it, and Heine asked me: "Can you give me one?" I gave him one, and he laid it back on his counter. That is my statement.

They found a revolver in my house, and a red flag there. I organized trades unions. I was for reduction of the hours of labor, and the education of laboring men, and the re-establishment of the *Arbeiter Zeitung*—the workingmen's newspaper. There is no evidence to show that I was connected with the bomb throwing, or that I was near it, or anything of that kind. So I am only sorry, your Honor—that is, if you can stop it or help it, I will ask you to do it—that is to hang me, too; for I think it is more honorable to die suddenly than to be killed by inches. I have a family and children; and if they know their father is dead, they will bury him. They can go to the grave, and kneel down by the side of it; but they can't go to the penitentiary and see their father, who was convicted for a crime that he hasn't had anything to do with. That is all I have got to say. Your Honor, I am sorry I am not to be hung with the rest of the men.

*Adolph Fischer.* I was tried here in this room for murder, and I was convicted of Anarchy. I am not a murderer. I had nothing to do with the throwing of the bomb. I made arrangements for the Haymarket meeting and was present, but it had not been called for the purpose of committing violence or crime. I was present at the Monday evening meeting, but aside from volunteering to have handbills printed for the Haymarket meeting, had not

done anything. I invited Spies to speak at the Haymarket, and in the original copy, I had had the line put in, "Workingmen, appear armed!" My reason for this was I did not want the workingmen to be shot down in that meeting as on other occasions. The verdict against me was because I am an Anarchist, and an Anarchist is always ready to die for his principles.

The more the believers in just causes are persecuted, the more quickly will their ideas be realized. For instance, in rendering such an unjust and barbarous verdict, the twelve "honorable men" in the jury box have done more for the furtherance of Anarchism than the convicted have accomplished in a generation. This verdict is a death blow to free speech, free press and free thought in this country, and the people will be conscious of it, too. This is all I care to say.

*Louis Lingg.* I have been accused of murder and been convicted; and what proof have you brought that I am guilty. I helped Seliger to make bombs; but what you have not proven—even with the assistance of your bought "squealer," Seliger, who would appear to have acted such a prominent part in the affair—is that any of those bombs were taken to the Haymarket. The testimony of the experts simply showed that the Haymarket bomb bore a certain resemblance to those bombs, and that was the kind of evidence, I say, upon which I have been convicted. I have been convicted of murder, but it was Anarchy on which the verdict was based. You have charged me with despising law and order. What does your "law and order" amount to? Its representatives are the police, and they have thieves in their ranks. Mr. Grinnell leagued himself with a parcel of base, hiring knaves, to bring me to the gallows. The Judge himself was forced to admit that the State's Attorney had not been able to connect me with the bomb throwing. The latter knows how to get around it, however. He charges me with being a "conspirator." How does he prove it? Simply by declaring the International Workingmen's Association to be a "conspiracy." I was a member of that body, so he has the charge securely fastened on me. Excellent!

I tell you frankly and openly, I am for force. I have already told Captain Schaack, "If they use cannon against us, we shall use dynamite against them." I repeat that I am the enemy of the "order" of today, and I repeat that, with all my powers so long as breath remains in me, I shall combat it. I declare again, frankly and openly, that I am in favor of using force. I have told Captain Schaack, and I stand by it, "If you cannonade us, we shall dynamite you." You laugh! Perhaps you think, "You'll throw no more bombs," but let me assure you that I die happy on the gallows, so confident am I that the hundreds and thousands to whom I have spoken will remember my words; and when you shall have hanged us, then, mark my words, they will do the bomb-throwing! In this hope do I say to you: "I despise you. I despise your order, your laws, your force-propped authority." Hang me for it!



*George Engel.* On my arrival in America in 1872, the reasons which prompted me to espouse Anarchy, was "the poverty, the misery of the working classes." People here in a free land were "doomed to die of starvation." I read the works of Lassalle, Marx and George, and after studying the labor question carefully, had come to the conclusion that "a workingman could not decently exist in this rich country." I had sought to remedy the inequalities through the ballot-box, but after a time, it had become clear to me "that the working classes could never bring about a form of society guaranteeing work, bread and a happy life by means of the ballot." I labored for a time in the interest of the Social Democratic party, but, finding political corruption in its ranks, I left it.

I left this party and joined the International Working People's Association, that was just being organized. The members of that body have the firm conviction that the workingman can free himself from the tyranny of capitalism only through force—just as all advances of which history speaks have been brought about through force alone. We see from the history of this country that the first colonists won their liberty only through force; that through force slavery was abolished, and just as the man who agitated against slavery in this country had to ascend the gallows, so also must we. He who speaks for the workingmen today must hang. And why? Because this republic is not governed by people who have obtained their office honestly. Who are the leaders at Washington that are to guard the interest of this nation? Have they been elected by the people, or by the aid of their money? They have no right to make laws for us, because they were not elected by the people. These are the reasons why I have lost all respect for American laws.

Labor has been displaced by machinery and the amelioration of the workingmen's condition can only be effected through Socialism. As to my conviction, I am not at all surprised. I learned long ago that the workingman has no more rights here than anywhere else in the world. My crime, consists simply in having labored to bring about a system of society by which it is not possible for one to hoard millions, through the improvements in machinery, while the great masses sink to degradation and misery. I believed that inventions should be free to all. As to the aims of Anarchy, in my opinion, Anarchy and Socialism are as much alike as one egg is to another. Whatever difference exists is in tactics.

It is true, I am acquainted with several of my fellow-defendants; with most of them, however, but slightly, through seeing them at meetings, and hearing them speak. Nor do I deny that I, too, have spoken at meetings, saying that, if every workingman had a bomb in his pocket, capitalistic rule would soon come to an end. That is my opinion, and my wish; it became my conviction when I mentioned the wickedness of the capitalistic conditions of the day.

Can any one feel any respect for a government that accords rights only to the privileged classes, and none for the workers? We

have seen but recently how the coal barons combined to form a conspiracy to raise the price of coal, while at the same time reducing the already low wages of their men. Are they accused of conspiracy on that account? But when workingmen dare ask an increase in their wages, the militia and the police are sent out to shoot them down.

For such a government as this I can feel no respect, and will combat them, despite their power, despite their police, despite their spies. I hate and combat, not the individual capitalist, but the system that gives him those privileges. My greatest wish is that workingmen may recognize who are their friends and who are their enemies. As to my conviction, brought about, as it was, through capitalistic influence, I have not one word to say.

*Samuel Fielden.* I have been, in England, a Sunday school superintendent, a local preacher of the Methodist church, and an exhorter. I changed my convictions after coming to the United States in 1868. I had neither said at the Haymarket meeting, "Here come the bloodhounds," nor had I fired a revolver. The meeting had been a peaceable one, and there had been no indication of trouble, and my language had not been incendiary.

I am charged with having said, "Stab the law." No one claims but that it was in connection with my conception of the meaning of Foran's speech, and the word "stab" is not necessarily a threat of violence upon any person. Here at your primary elections you frequently hear the adherents of different candidates state before the primaries are called that they will "knife" so and so. Do they mean that they are going to kill him, stab him, take his life away from him? They are forcible expressions—very emphatic expressions. They are adjectives which are used in different ways to carry conviction, and perhaps make the language more startling to the audience, in order that they may pay attention.

I didn't attempt to run away. I had been out walking around the street that morning, and there was plenty of opportunity for me to have been hundreds of miles away. When the officer came there I opened the door to him. He said he wanted me. I knew him by sight, and I knew what was his occupation. I said: "All right; I will go with you." I have said here that I thought, when the representatives of the State had inquired by means of their policemen as to my connection with it, that I should have been released. And I say now, in view of all the authorities that have been read on the law and regarding accessories, that there is nothing in the evidence that has been introduced to connect me with that affair. One of the Chicago papers, at the conclusion of the State's Attorney's case, said that they might have proved more about these men, about where they were and what they were doing on the 2d and 3d of May. When I was told that Captain Schaack had got confessions out of certain persons connected with this affair, I said: "Let them confess all they like. As long as they will tell only the truth, I care nothing for their

We claim that the foulest criminal that could have been picked up in the slums of any city of Christendom, or outside of it, would never have been convicted on such testimony as has been brought in here, if he had not been a dangerous man in the opinion of the privileged classes. We claim that we are convicted, not because we have committed murder. We are convicted because we were very energetic in advocacy of the rights of labor. I call your attention to a very significant fact—that on this day, at this time, when the sentence of death is going to be passed on us, the Stock-yards employers have notified their employes that they will be required to work ten hours next Monday or they will shut down. I think it is a logical conclusion to draw that these men think they have got a dangerous element out of the way now, and they can return again to the ten-hour system. I know that I had considerable to do with the eight-hour question, although I only spoke once in that neighborhood, every man there being a stranger to me—but I went down there in March previous and made an eight-hour speech and formed the nucleus of an eight-hour organization there, and the Stock-yards succeeded in starting the eight-hour system, though they have not been able to keep it up in its entirety. We claim that we have done much.

It will be a grand day when everybody adopts Socialism, but I deny that I entered into a conspiracy. Fischer, Lingg and Engel were men with whom I had not associated for a year, and therefore I could not have been conspiring with them. I had never seen a dynamite bomb until I saw one in the court-room, and had never known that dynamite was kept at the *Arbeiter Zeitung* office.

Your honor, I have worked at hard labor since I was eight years of age. I went into a cotton factory when I was eight years old, and I have worked continually since, and there has never been a time in my history that I could have been bought or paid into a single thing by any man or for any purpose which I did not believe to be true. To contradict the lie that was published in connection with the bill by the grand jury charging us with murder, I wish to say that I have never received one cent for agitating. When I have gone out of the city I have had my expenses paid. But often when I have gone into communities, when I would have to depend upon those communities for paying my way, I have often come back to this city with money out of pocket, which I had earned by hard labor, and I had to pay for the privilege of my agitation out of the little money I might have in my possession. Today, as the beautiful autumn sun kisses with balmy breeze the cheek of every free man, I stand here never to bathe my head in its rays again. I have loved my fellowmen as I have loved myself. I have hated trickery, dishonesty and injustice. The nineteenth century commits the crime of killing its best friend. It will live to repent of it. But, as I have said before, if it will do any good, I freely give myself up. I trust the time will come when there will be a better under-

have seen but recently how the coal barons combined to form a conspiracy to raise the price of coal, while at the same time reducing the already low wages of their men. Are they accused of conspiracy on that account? But when workingmen dare ask an increase in their wages, the militia and the police are sent out to shoot them down.

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*Samuel Fielden.* I have been, in England, a Sunday school superintendent, a local preacher of the Methodist church, and an exhorter. I changed my convictions after coming to the United States in 1868. I had neither said at the Haymarket meeting, "Here come the bloodhounds," nor had I fired a revolver. The meeting had been a peaceable one, and there had been no indication of trouble, and my language had not been incendiary.

I am charged with having said, "Stab the law." No one claims but that it was in connection with my conception of the meaning of Foran's speech, and the word "stab" is not necessarily a threat of violence upon any person. Here at your primary elections you frequently hear the adherents of different candidates state before the primaries are called that they will "knife" so and so. Do they mean that they are going to kill him, stab him, take his life away from him? They are forcible expressions—very emphatic expressions. They are adjectives which are used in different ways to carry conviction, and perhaps make the language more startling to the audience, in order that they may pay attention.

I didn't attempt to run away. I had been out walking around the street that morning, and there was plenty of opportunity for me to have been hundreds of miles away. When the officer came there I opened the door to him. He said he wanted me. I knew him by sight, and I knew what was his occupation. I said: "All right; I will go with you." I have said here that I thought, when the representatives of the State had inquired by means of their policemen as to my connection with it, that I should have been released. And I say now, in view of all the authorities that have been read on the law and regarding accessories, that there is nothing in the evidence that has been introduced to connect me with that affair. One of the Chicago papers, at the conclusion of the State's Attorney's case, said that they might have proved more about these men, about where they were and what they were doing on the 2d and 3d of May. When I was told that Captain Schaack had got confessions out of certain persons connected with this affair, I said: "Let them confess all they like. As long as they will tell only the truth, I care nothing for their confessions."

We claim that the foulest criminal that could have been picked up in the slums of any city of Christendom, or outside of it, would never have been convicted on such testimony as has been brought in here, if he had not been a dangerous man in the opinion of the privileged classes. We claim that we are convicted, not because we have committed murder. We are convicted because we were very energetic in advocacy of the rights of labor. I call your attention to a very significant fact—that on this day, at this time, when the sentence of death is going to be passed on us, the Stock-yards employers have notified their employes that they will be required to work ten hours next Monday or they will shut down. I think it is a logical conclusion to draw that these men think they have got a dangerous element out of the way now, and they can return again to the ten-hour system. I know that I had considerable to do with the eight-hour question, although I only spoke once in that neighborhood, every man there being a stranger to me—but I went down there in March previous and made an eight-hour speech and formed the nucleus of an eight-hour organization there, and the Stock-yards succeeded in starting the eight-hour system, though they have not been able to keep it up in its entirety. We claim that we have done much.

It will be a grand day when everybody adopts Socialism, but I deny that I entered into a conspiracy. Fischer, Lingg and Engel were men with whom I had not associated for a year, and therefore I could not have been conspiring with them. I had never seen a dynamite bomb until I saw one in the court-room, and had never known that dynamite was kept at the *Arbeiter Zeitung* office.

Your honor, I have worked at hard labor since I was eight years of age. I went into a cotton factory when I was eight years old, and I have worked continually since, and there has never been a time in my history that I could have been bought or paid into a single thing by any man or for any purpose which I did not believe to be true. To contradict the lie that was published in connection with the bill by the grand jury charging us with murder, I wish to say that I have never received one cent for agitating. When I have gone out of the city I have had my expenses paid. But often when I have gone into communities, when I would have to depend upon those communities for paying my way, I have often come back to this city with money out of pocket, which I had earned by hard labor, and I had to pay for the privilege of my agitation out of the little money I might have in my possession. Today, as the beautiful autumn sun kisses with balmy breeze the cheek of every free man, I stand here never to bathe my head in its rays again. I have loved my fellowmen as I have loved myself. I have hated trickery, dishonesty and injustice. The nineteenth century commits the crime of killing its best friend. It will live to repent of it. But, as I have said before, if it will do any good, I freely give myself up. I trust the time will come when there will be a better under-

standing, more intelligence, and above the mountains of iniquity, wrong and corruption, I hope the sun of righteousness and truth and justice will come to bathe in its balmy light an emancipated world.

*Albert R. Parsons.* Your honor, if there is one distinguished characteristic which has made itself prominent in the conduct of this trial, it has been the passion, the heat, and the anger, the violence both to sentiment and to person, of everything connected with this case. You ask me why sentence of death should not be pronounced upon me, or, what is tantamount to the same thing, you ask me why you should give me a new trial in order that I might establish my innocence and the ends of justice be subserved. I answer you and say that this verdict is the verdict of passion, born in passion, nurtured in passion, and is the sum total of the organized passion of the city of Chicago. For this reason I ask your suspension of the sentence, and a new trial. This is one among the many reasons which I hope to present before I conclude. Now, what is passion? Passion is the suspension of reason; in a mob upon the streets, in the broils of the saloon, in the quarrel on the sidewalk, where men throw aside their reason and resort to feelings of exasperation, we have passion. There is a suspension of the elements of judgment, of calmness, of discrimination requisite to arrive at the truth and the establishment of justice. I hold that you cannot dispute the charge which I make, that this trial has been submerged, immersed in passion from its inception to its close, and even to this hour, standing here upon the scaffold as I do, with the hangman awaiting me with his halter, there are those who claim to represent public sentiment in this city—and I now speak of the capitalistic press, that vile and infamous organ of monopoly, of hired liars, the people's oppressor—even to this day these papers, standing where I do, with my seven condemned colleagues, are clamoring for our blood in the heat and violence of passion. Who can deny this? Certainly not this Court. The Court is fully aware of these facts.

In order that I may place myself properly before you, it is necessary, in vindication of whatever I may have said or done in the history of my past life, that I should enter somewhat into details, and I claim, even at the expense of being lengthy, the ends of justice require that this shall be done.

For the past twenty years my life has been closely identified with, and I have actively participated in, what is known as the labor movement in America. I have some knowledge of that movement in consequence of this experience and of the careful study which opportunity has afforded me from time to time to give to the matter, and in what I have to say upon this subject relating to the labor movement, or to myself as connected with it in this trial and before this bar, I will speak the truth, the whole truth, be the consequences what they may.

The United States census for 1880 reports that there are in the

United States 16,200,000 wage-workers. These are the persons who, by their industry, create all the wealth of this country. And now, before I say anything further, it may be necessary, in order to clearly understand what I am going to state further on, for me to define what I mean and what is meant in the labor movement by these words, wage-worker. A wage-worker is one who works for wages and who has no other means of subsistence than by the selling of his daily toil from hour to hour, day to day, week to week, month to month, and year to year, as the case may be. Their whole property consists entirely of their labor, strength, and skill—or rather, they possess nothing but their empty hands. They live only when afforded an opportunity to work, and this opportunity must be procured from the possessors of the means of subsistence—capital—before their right to live at all or the opportunity to do so is possessed. Now, there are 16,200,000 of these people in the United States, according to the census of 1880. Among this number are 9,000,000 men, and reckoning five persons to each family, they represent 45,000,000 of our population. It is claimed that there are between eleven and twelve millions of voters in the United States. Now, out of these 12,000,000, 9,000,000 of these voters are wage-workers. The remainder of the 16,200,000 is composed of the women, boys and girls—the children—employed in the factories, the mines, farms, and the various avocations of this country. The class of people—the producing class—who alone do all the productive labor of this country, are the hirelings and dependents of the propertied class.

Your Honor, I have, as a workingman, espoused what I conceive to be the just claims of the working class; I have defended their right to liberty and insisted upon their right to control their own labor and the fruits thereof, and in the statement that I am to make here before this Court upon the question why I should not be sentenced, or why I should be permitted to have a new trial, you will also be made to understand why there is a class of men in this country who come to your Honor and appeal to you not to grant us a new trial. I believe, sir, that the representatives of that millionaire organization of Chicago, known as the Chicago Citizens' Association, stand to a man demanding of your Honor our immediate extinction and suppression by an ignominious death.

Now, I stand here as one of the people, a common man, a workingman, one of the masses, and I ask you to give ear to what I have to say. You stand as a bulwark; you are as a brake between them and us. You are here as the representative of justice, holding the poised scales in your hands. You are expected to look neither to the right nor to the left, but to that by which justice, and justice alone, shall be subserved. The conviction of a man, your Honor, does not necessarily prove that he is guilty. Your law books are filled with instances where men have been carried to the scaffold and after their death it has been proven that their execution was a judicial murder. Now, what end can be subserved in hurry-

ing this matter through in the manner in which it has been done? Where are the ends of justice subverted, and where is truth found in hurrying seven human beings at the rate of express speed upon a fast train to the scaffold and an ignominious death? Why, if your Honor please, the very methods of our extermination, the deep damnation of its taking off, appeals to your Honor's sense of justice, of rectitude, and of honor. A judge may also be an unjust man. Such things have been known. We have, in our histories, heard of Lord Jeffreys. It need not follow that because a man is a judge he is also just. As everyone knows, it has long since become the practice in American politics for the candidates for judgeships throughout the United States to be named by corporation and monopoly influences, and it is a well-known secret that more than one of our Chief Justices have been appointed to their seats upon the bench of the United States Supreme Court at the instance of the leading railway magnates of America—the Huntingtons and Jay Goulds. Therefore the people are beginning to lose confidence in some of our courts of law.

Now, I have not been able to gather together and put in a consecutive shape these thoughts which I wish to present here for your consideration. They have been put together hurriedly in the last few days, since we began to come in here—first, because I did not know what you would do, nor what the position of your Honor would be in the case; and secondly, because I did not know upon what ground the deduction of the prosecution would be made denying us the right of a rehearing, and, therefore, if the method of the presentation of this matter be somewhat disconnected and disjointed, it may be ascribed to that fact, over which I have no control.

I maintain that our execution, as the matter stands just now, would be a judicial murder, rank and foul, and judicial murder is far more infamous than lynch law—far worse. Bear in mind, please, this trial was conducted by a mob, prosecuted by a mob, by the shrieks and the howls of a mob—an organized, powerful mob. But that trial is now over. You sit here judicially, calmly, quietly, and it is now for you to look at this thing from the standpoint of reason and common sense. There is one peculiarity about the case that I want to call your attention to. It is the manner and the method of its prosecution! On the one side, the attorneys for the prosecution conducted this case from the standpoint of capitalists as against laborers. On the other side, the attorneys for the defense conducted this case as a defense against murder—not for laborers and not against capitalists.

The prosecution in this case throughout has been a capitalistic prosecution, inspired by the instinct of capitalism, and I mean by that by class feelings, by a dictatorial right to rule, and a denial to common people the right to say anything or have anything to say to these men, by that class of persons who think that working people have but one right and one duty to perform, viz.: Obedience.



They conducted this trial from that standpoint throughout, and, as was very truthfully stated by my comrade Fielden, we were prosecuted ostensibly for murder until near the end of the trial, when all at once the jury is commanded—yea, commanded—to render a verdict against us as Anarchists.

Your Honor, you are aware of this; you know this to be the truth; you sat and heard it all. I will not make a statement but what will be in accord with the facts, and what I do say is said for the purpose of refreshing your memory and asking you to look at both sides of this matter and view it from the standpoint of reason and common sense.

Now, the money-makers, the business men, those people who deal in stocks and bonds, the speculators and employers, all that class of men known as the money-making class, have no conception of this labor question; they don't understand what it means. To use the street parlance, with many of them it is a difficult matter to "catch onto" it, and they are perverse also; they will have no knowledge of it. They don't want to know anything about it, and they won't hear anything about it, and they propose to club, lock up, and, if necessary, strangle those who insist on their hearing this question. Can it be any longer denied that there is such a thing as the labor question in this country?

I am an Anarchist. Now strike! But hear me before you strike. What is Socialism, or Anarchism? Briefly stated, it is the right of the toilers to the free and equal use of the tools of production, and the right of the producers to their product. That is Socialism. The history of mankind is one of growth. It has been evolutionary and revolutionary. The dividing line between evolution and revolution, or that imperceptible boundary line where one begins and the other ends, can never be defined. Who believed at the time that our forefathers tossed the tea into the Boston harbor that it meant the first revolt of the revolution separating this continent from the dominion of George III. and founding this Republic here in which we, their descendants, live today? Evolution and revolution are synonymous. Evolution is the incubatory state of revolution. The birth is the revolution—its process the evolution. What is the history of man with regard to the laboring classes?

Originally the earth and its contents were held in common by all men. Then came a change brought about by violence, robbery and wholesale murder, called war. Later, but still way back in history, we find that there were but two classes in the world—slaves and masters. Time rolled on and we find a labor system of serfdom. This serf-labor system existed in the sixteenth and seventeenth centuries, and throughout the world the serf had a right to the soil on which he lived. The lord of the land could not exclude him from its use. But with the discovery of America and the developments which followed that discovery and its settlement, a century or two afterwards, the gold found in Mexico and Peru by the in-

vading hosts of Cortez, and Pizarro who carried back to Europe this precious metal, infused new vitality into the stagnant commercial blood of Europe and set in motion those wheels which have rolled on and on until today commerce covers the face of the earth—time is annihilated and distance is known no more. Following the abolition of the serfdom system was the establishment of the wage-labor system. This found its fruition, or birth, rather, in the French revolution of 1789 and 1793. It was then for the first time that civil and political liberty was established in Europe.

We see, by a mere glance back into history, that the sixteenth century was engaged in a struggle for religious freedom and the right of conscience—mental liberty. Following that, in the seventeenth and eighteenth centuries, was the struggle throughout France which resulted in the establishment of the Republic and the founding of the right of political liberty. The struggle today, which follows on in the line of progress, and in the logic of events, the industrial problem, which is here in this courtroom, of which we are the representatives, and of which the State's Attorney has said we were, by the grand jury selected because we were the leaders of it, and are to be punished and consigned to an ignominious death for that reason, that the wage slaves of Chicago and of America may be horrified, terror stricken, and driven like "rats back to their holes," to hunger, slavery, misery and death. The industrial question, following on in the natural order of events, the wage system of industry, is now up for consideration; it presses for a hearing; it demands a solution; it cannot be throttled by this District Attorney, nor all the District Attorneys upon the soil of America.

Now, what is this labor question which these gentlemen treat with such profound contempt, which these distinguished, "honorable" gentlemen would throttle and put to ignominious death, and hurry us like "rats to our holes?" What is it? You will pardon me if I exhibit some feeling? I have sat here for two months, and these men have poured their vituperations out upon my head and I have not been permitted to utter a single word in my own defense. For two months they have poured their poison upon me and my colleagues. For two months they have sat here and spit like adders the vile poison of their tongues, and if men could have been placed in a mental inquisition and tortured to death, these men would have succeeded here now—vilified, misrepresented, held in loathsome contempt without a chance to speak or contradict a word. Therefore, if I show emotion, it is because of this, and if my comrades and colleagues with me here have spoken in such strains as these, it is because of this. Pardon us. Look at it from the right standpoint.

What is this labor question? It is not a question of emotion; the labor question is not a question of sentiment; it is not a religious matter; it is not a political problem; no, sir, it is a stern economic fact, a stubborn and immovable fact. It has, it is true, its emotional phase; it has its sentimental, religious, political as-

peets, but the sum total of this question is the bread and butter question, the how and the why we will live and earn our daily bread. This is the labor movement. It has a scientific basis. It is founded upon fact, and I have been to considerable pains in my researches of well-known and distinguished authors on this question to collect and present to you briefly what this question is and what it springs from. I will first explain to you briefly what capital is.

Capital—artificial capital—is the stored-up, accumulated surplus of past labor; capital is the product of labor. Its function is—that is the function of capital is—to appropriate or confiscate for its own use and benefit the “surplus” labor product of the wealth producer. The capitalistic system originated in the forcible seizure of natural opportunities and rights by a few and then converting those things into special privileges which have since become “vested rights,” formally entrenched behind the bulwarks of statute law and Government. Capital could not exist unless there also existed a majority class who were propertyless, that is, without capital, a class whose only mode of existence is by selling their labor to capitalists. Capitalism is maintained, fostered, and perpetuated by law; in fact, capital is law—statute law—and law is capital.

Now, briefly stated, for I will not take your time but a moment, what is labor? Labor is a commodity and wages is the price paid for it. The owner of this commodity—of labor—sells it, that is, himself, to the owner of capital in order to live. Labor is the expression of energy, the power of the laborer's life. This energy or power he must sell to another person in order to live. It is his only means of existence. He works to live, but his work is not simply a part of his life; it is the sacrifice of it. His labor is a commodity which under the guise of free labor, he is forced by necessity to hand over to another party. The whole of the wage laborer's activity is not the product of his labor—far from it. The silk he weaves, the palace he builds, the ores he digs from out the mines are not for him—oh, no. The only thing he produces for himself is his wage, and the silk, the ores and the palace which he has built are simply transformed for him into a certain kind of means of existence, namely, a cotton shirt, a few pennies, and the mere tenancy of a lodging house. In other words, his wages represent the bare necessities of his existence and the unpaid-for or “surplus” portion of his labor product constitutes the vast superabundant wealth of the non-producing or capitalistic class. That is the capitalistic system defined in a few words. It is this system that creates these classes, and it is these classes that produce this conflict. This conflict intensifies as the power of the privileged classes over the non-possessing or propertyless classes increases and intensifies, and this power increases as the idle few become richer and the producing many become poorer, and this produces what is called the labor movement. This is the labor question. Wealth is power; poverty is weakness.

If I had time I might stop here to answer some suggestions that probably arise in the minds of some persons, or perhaps of your Honor, not being familiar with this question. I imagine I hear your Honor say, "Why, labor is free. This is a free country." Now, we had in the Southern States for nearly a century a form of labor known as chattel slave labor. That has been abolished, and I hear you say that labor is free; that the war has resulted in establishing free labor all over America. Is this true? Look at it. The chattel slave of the past—the wage slave of today; what is the difference? The master selected under chattel slavery his own slaves. Under the wage slavery system the wage slave selects his master. Formerly the master selected the slave; today the slave selects his master, and he has got to find one or else he is carried down here to my friend, the jailer, and occupies a cell along side of myself. He is compelled to find one. So the change of the industrial system in the language of Jefferson Davis, ex-President of the Southern Confederacy, in an interview with the *New York Herald* upon the question of the chattel slave system of the South and that of the so-called "free-laborer," and their wages—Jefferson Davis has stated positively that the change was a decided benefit to the former chattel slave owners, who would not exchange the new system of wage labor at all for chattel labor, because now the dead had to bury themselves and the sick take care of themselves, and now they don't have to employ overseers to look after them. They give them a task to do—a certain amount to do. They say: "Now, here, perform this piece of work in a certain length of time," and if you don't (under the wage system, says Mr. Davis), why, when you come around for your pay next Saturday you simply find in the envelope which gives you your money a note which informs you of the fact that you have been discharged. Now, Jefferson Davis admitted in his statement that the leather-thong dipped in salt brine, for the chattel slave, had been exchanged under the wage system for the lash of hunger, an empty stomach, and the ragged back of the wage earner of free-born American sovereign citizens, who, according to the census of the United States for 1880, constitute more than nine-tenths of our entire population. But, you say, the wage slave had advantages over the chattel slave. The chattel slave couldn't get away from it. Well, if we had the statistics, I believe it could be shown that as many chattel slaves escaped from bondage with the bloodhounds of their masters after them as they tracked their way over the snow-beaten rocks of Canada, and via the underground grapevine road—I believe the statistics would show today that as many chattel slaves escaped from their bondage under that system as can, and as many do, escape today from the wage bondage into capitalistic liberty.

I am a Socialist. I am one of those, although myself a wage slave, who holds that it is wrong—wrong to myself, wrong to my neighbor, and unjust to my fellowmen—for me to undertake to make my escape from wage slavery by becoming a master and an

owner of others' labor. I refuse to do it. Had I chosen another path in life, I might be living upon an avenue of the city of Chicago today, surrounded in my beautiful home with luxury and ease, and servants to do my bidding. But I chose the other road, and instead I stand here today upon the scaffold, as it were. This is my crime. Before high heaven this and this alone is my crime. I have been false, I have been untrue, and I am a traitor to the infamies that exist today in capitalistic society. If this is a crime in your opinion I plead guilty to it. Now, be patient with me; I have been with you—or, rather, I have been patient with this trial. Follow me, if you please, and look at the oppressions of this capitalistic system of industry. As was depicted by my comrade Fielden this morning, every new machine that comes into existence comes there as a competitor with the man of labor. Every machine under the capitalistic system that is introduced into industrial affairs comes as a competitor, as a drag and menace and a prey to the very existence of those who have to sell their labor in order to earn their bread. The man is turned out to starve and whole occupations and pursuits are revolutionized and completely destroyed by the introduction of machinery in a day, in an hour, as it were. I have known it to be the case in the history of my own life—and I am yet a young man—that whole pursuits and occupations have been wiped out by the invention of machinery.

What becomes of these people? Where are they? They become competitors of other laborers, and are made to reduce wages and increase the work hours. Many of them are candidates for the gibbet, they are candidates for your prison cells. Build more penitentiaries; erect more scaffolds, for these men are upon the highway of crime, of misery, of death.

Your Honor, there never was an effect without a cause. The tree is known by its fruit. Socialists are not those who blindly close their eyes and refuse to look, and who refuse to hear, but having eyes to see, they see, and having ears to hear, they hear. Look at this capitalistic system; look at its operation upon the small business men, the small dealers, the middle class. *Bradstreet's* tells us in last year's report that there were 11,000 small business men financially destroyed in the past twelve months. What became of those people? Where are they, and why have they been wiped out? Has there been any less wealth? No; that which they possessed has simply transferred itself into the hands of some other person. Who is that other? It is he who has greater capitalistic facilities. It is the monopolist, the man who can run corners, who can create rings and squeeze these men to death and wipe them out like dead flies from the table into his monopolistic basket. The middle classes destroyed in this manner join the ranks of the proletariat. They become what? They seek out the factory gate, they seek in the various occupations of wage labor for employment. What is the result? Then there are more men upon the market. This increases the number of those who are applying for

employment. What then? This intensifies the competition, which in turn creates greater monopolists, and with it wages go down until the starvation point is reached, and then what?

Your Honor, Socialism comes to the people and asks them to look into this thing, to discuss it, to reason, to examine it, to investigate it, to know the facts, because it is by this, and this alone, that violence will be prevented and bloodshed will be avoided, because, as my friend here has said, men in their blind rage, in their ignorance, not knowing what ails them, knowing they are hungry, that they are miserable, and destitute, strike blindly, and do as they did with Maxwell in this city, and fight the labor-saving machinery. Imagine such an absurd thing and yet the capitalistic press has taken great pains to say the Socialists do these things; that we fight machinery; that we fight property. Why, sir, it is an absurdity; it is ridiculous; it is preposterous. No man ever heard an utterance from the mouth of a Socialist to advise anything of the kind. They know to the contrary. We don't fight machinery; we don't oppose these things. It is only the manner and methods of employing it that we object to. That is all. It is the manipulation of these things in the interests of a few; it is the monopolization of them that we object to. We desire that all the forces of nature, all the forces of society, of the gigantic strength which has resulted from the combined intellect and labor of the ages of the past shall be turned over to man and made his servant, his obedient slave forever. This is the object of Socialism. It asks no one to give up anything. It seeks no harm to anybody. But when we witness this condition of things—when we see little children huddling around the factory gates, the poor little things whose bones are not yet hard; when we see them clutched from the hearthstone, taken from the family altar, and carried to the bastiles of labor and their little bones ground up into gold dust to bedeck the form of some aristocratic Jezebel—then it stirs me and I speak out. We plead for the little ones; we plead for the helpless; we plead for the oppressed; we seek redress for those who are wronged; we seek knowledge and intelligence for the ignorant; we seek liberty for the slave; Socialism secures the welfare of every human being.

Your Honor, if you will permit it, I would like to stop now and resume tomorrow morning.

*October 8.*

*Parsons.* Your Honor, I concluded last evening at that portion of my statement before you which had for its purpose a showing of the operations and effects of our existing social system, the evils which naturally flow from the established social relations, which are founded upon the economic subjection and dependence of the man of labor to the monopolizer of the means of labor and the resources of life. I sought in this connection to show that the ills that afflict society—social miseries, mental degradations, political dependence—all resulted from the economic subjection and dependence of the man of labor upon the monopolizer of the means

of existence; and as long as the cause remains the effect must certainly follow.

I pointed out what *Bradstreet's* had to say in regard to the destruction of the middle class last year. As it affects the small dealers, the middle class men of our shop streets, the same influences are likewise at work among the farming classes. According to statistics 90 per cent of the farms of America are today under mortgage. The man who a few years ago owned the soil that he worked is today a tenant at will, and a mortgage is placed upon his soil, and when he—the farmer whose hand tickles the earth and causes it to blossom as the rose and bring forth its rich fruits for human sustenance—even while this man is asleep the interest upon the mortgage continues. It grows and it increases, rendering it more and more difficult for him to get along or make his living. In the meantime the railway corporations place upon the traffic all that the market will bear. The Board of Trade sharks run their corners until—what? Until it occurs, as stated in the *Chicago Tribune* about three months ago, that a freight train of corn from Iowa, consigned to a commission merchant in Chicago, had to be sold for—well, for less than the cost of freight, and there was a balance due the commission man on the freight of \$3 after he had sold the corn. The freightage upon that corn was \$3 more than the corn brought in the market. So it is with the tenant farmers of America.

Your Honor, we do not have to go to Ireland to find the evils of landlordism. We do not have to cross the Atlantic ocean to find Lord Lietrem's rack-renters, landlords who evict their tenants. We have them all around us. There is Ireland right here in Chicago and everywhere else in this country. Look at Bridgeport, where the Irish live! Look! Tenants at will, huddled together as State's Attorney Grinnell calls them, like rats; living as they do in Dublin, living precisely as they do in Limerick—taxed to death, unable to meet the extortions of the landlord.

We were told by the prosecution that law is on trial; that Government is on trial. That is what the gentlemen on the other side stated to the jury. The law is on trial, and Government is on trial. Well, up to near the conclusion of the trial we, the defendants, supposed that we were indicted and being tried for murder. Now, if the law is on trial and if the Government is on trial, who has placed it upon trial? And I leave it to the people of America whether the prosecution in this case have made out a case; and I charge it here now frankly that in order to bring about this conviction the prosecution, the representatives of the State, the sworn officers of the law, those whose obligation it is to the people to obey the law and preserve order—I charge upon them a wilfull, a malicious, a purposed violation of every law which guarantees every right to every American citizen. They have violated free speech. In the prosecution of this case they have violated a free press. They have violated the right of public assembly. Yea,

they have even violated and denounced the right of self-defense. I charge the crime home to them. The great blood-bought rights, for which our forefathers spent centuries of struggle, it is attempted to run them like rats into a hole by the prosecution in this case. Why, gentlemen, "law is upon trial," "Government is upon trial," indeed. Yea, they are themselves guilty of the precise thing of which they accuse me. They say that I am an Anarchist and refuse to respect the law. "By their works ye shall know them," and out of their own mouths they stand condemned. They are the real Anarchists in this case, as that word is commonly understood, while we stand upon the constitution of the United States.

I have violated no law of this country. Neither I nor my colleagues here have violated any legal right of American citizens. We stand upon the right of free speech, of free press, of public assemblage, unmolested and undisturbed. We stand upon the constitutional right of self-defense, and we defy the prosecution to rob the people of America of these dearly bought rights. But the prosecution imagines that they have triumphed because they propose to put to death seven men. Seven men to be exterminated in violation of law, because they insist upon these inalienable rights. Seven men are to be exterminated because they demand the right of free speech and exercise it. Seven men by this court of law are to be put to death because they claim their right of self-defense. Do you think, gentlemen of the prosecution, that you will have settled the case when you are carrying my lifeless bones to the potter's field? Do you think that this trial will be settled by my strangulation and that of my colleagues? I tell you that there is a greater verdict yet to be heard from. The American people will have something to say about this attempt to destroy their rights, which they hold sacred. The American people will have something to say, when they understand this case, as to whether or not the Constitution of this country can be trampled under foot at the dictation of monopoly and corporations and their hired tools.

Your Honor read yesterday your reasons for refusing us a new trial, and I want to call your attention to it, if you please, on some points on which I think your Honor is laboring under misapprehension. Your Honor says that there can be no question in the mind of any one who has read these articles (referring to the *Alarm* and *Arbeiter Zeitung*), or heard these speeches, which were written and spoken long before the eight-hour movement was talked of, that this movement which they advocated was but a means in their estimation toward the ends which they sought, and the movement itself was not primarily of any consideration at all. Now, your Honor, I submit that you are sitting now in judgment, not alone upon my acts, but also upon my motives. Now, that is a dangerous thing for any man to do; any man is so liable to make a mistake in a matter of that kind. I claim that it would not be fair for you to assume to state what my motives were in the eight-



hour movement, that I was simply using it for another purpose. How do you know that? Can you read my heart and order my actions? If you go by the record, the record will disprove your conjecture, because it is a conjecture! The State's Attorney has throughout this trial done precisely what Mr. English, the reporter of the *Tribune*, said he was instructed to do by the proprietor of the *Tribune*, when he attended labor meetings. It was the custom of the head editors of the large dailies to instruct those who went to these labor meetings to report only the inflammatory and inciting passages of the speaker's remarks at the meetings. That is precisely the scheme laid out by the prosecution. They have presented you here copies of the *Alarm* running back for three years, and my speeches covering three years back. They have selected such portions of those articles, and such articles, mark you, as subserve their purpose, such as they supposed would be calculated to inflame your mind and prejudice you and the jury against us. You ought to be careful of this thing.

It is not fair, and it is not right for you to conclude that, from the showing made by these gentlemen, we were not what we pretended to be in this labor movement. Take the record. Why, I am well known throughout the United States for years and years past—my name is—and I have come in personal contact with hundreds of thousands of workingmen from Nebraska in the West to New York in the East, and from Maryland to Wisconsin and Minnesota. I have traversed the States for the past ten years, and I am known by hundreds of thousands who have seen and heard me. Possibly I had better stop a little, just a moment, here, and explain how this was. These labor organizations sent for me. Sometimes it was the Knights of Labor, sometimes it was the trades unions, sometimes the Socialistic organizations; but always as an organizer of workingmen, always as a labor speaker at labor meetings.

Now, if there is anything for which I am well known it is my advocacy of the eight-hour system of labor. But because I have said in this connection that I did not believe it would be possible to bring about a reform of this present wage system, because of the fact that the power of the employing class is so great that they can refuse to make any concessions, you say that I had no interest in the eight-hour movement.

Is it not a fact that the present social system places all power in the hands of the capitalistic class? They can and do refuse to make any concessions, and where they grant anything they retract it when they choose to do so. They can do it. The wage system gives them the power. The tyranny and the despotism of the wage system of labor consists in the fact that the laborer is compelled under penalty of hunger and death by starvation to obey and accept terms laid down to him by his employer. Hence I have pointed out that it might be difficult, for this reason, to establish an eight-hour rule.

What have I said in this connection? I have said to the employers, to the manufacturers, and to the corporations—the monopolists of America: “Gentlemen, the eight-hour system of labor is the olive branch of peace held out to you. Take it. Concede this moderate demand of the working people. Give them better opportunities. Let them possess the leisure which eight hours will bring. Let it operate on the wants and the daily habits of the people.” I have talked this way to the rich of this country in every place I have gone, and I have told them—not in the language of a threat, not in the language of intimidation. I have said: “If you do not concede this demand, if on the other hand you increase the hours of labor and employ more and more machinery, you thereby increase the number of enforced idle; you thereby swell the army of the compulsory idle and unemployed; you create new elements of discontent; you increase the army of idleness and misery.” I said to them: “This is a dangerous condition of things to have in a country. It is liable to lead to violence. It will drive the workers into revolution. The eight-hour demand is a measure which is in the interest of humanity, in the interest of peace, in the interest of prosperity and public order.”

Now, your Honor, can you take your comments there and say that we had other motives and ulterior motives? Your impression is derived from the inflammatory sections and articles selected by the prosecution for your Honor to read. I think I know what my motives were, and I am stating them deliberately, and fairly and honestly, leaving you to judge whether or not I am telling the truth. You say that “the different papers and speeches furnish direct contradiction to the arguments of the counsel for the defense that we proposed to resort to arms only in case of unlawful attacks of the police.” Why, the very article that you quote in the *Alarm*—a copy of which I have not, but which I would like to see—calling the American Group to assemble for the purpose of considering military matters and military organization, states specifically that the purpose and object is to take into consideration measures of defense against unlawful and unconstitutional attacks of the police. That identical article shows it. You forgot, surely, that fact when you made this observation; and I defy any one to show, in a speech that is susceptible of proof, by proof, that I have ever said aught by word of mouth or by written article except in self-defense. Does not the constitution of the country, under whose flag myself and my forefathers were born for the last 260 years, provide that protection and give me, their descendant, that right? Does not the Constitution say that I, as an American, have a right to keep and bear arms? I stand upon that right. Let me see if this Court will deprive me of it.

Let me call your attention to another point here. These articles that appear in the *Alarm*, for some of them I am not responsible any more than is the editor of any other paper. I did not write everything in the *Alarm*, and it might be possible that

there were some things in that paper which I am not ready to endorse. I am frank to admit that such is the case. I suppose you could scarcely find an editor of a paper in the world but could conscientiously say the same thing. Now, am I to be dragged here and executed for the utterances and the writings of other men, even though they were published in the columns of a paper of which I was the editor?

Your Honor, you must remember that the *Alarm* was a labor paper, published by the International Working People's Association. Belonging to that body, I was elected its editor by the organization, and, as labor editors generally are, I was handsomely paid. I had saw-dust pudding as a general thing for dinner. My salary was \$8 a week, and I have received that salary as editor of the *Alarm* for over two years and a half—\$8 a week! I was paid by the association. It stands upon the books. Go down to the office and consult the business manager. Look over the record in the book and it will show you that Albert R. Parsons received \$8 a week as editor of the *Alarm* for over two years and a half. This paper belonged to the organization. It was theirs. They sent in their articles—Tom, Dick, and Harry; everybody wanted to have something to say, and I had no right to shut off anybody's complaint. The *Alarm* was a labor paper, and it was specifically published for the purpose of allowing every human being who wore the chains of monopoly an opportunity to clank those chains in the columns of the *Alarm*. It was a free press organ. It was a free speech newspaper. But your Honor says: "Oh, well, Parsons, your own language, your own words, your own statements at this meeting—what you said." Well, possibly, I have said some foolish things. Who has not? As a public speaker, probably I have uttered some wild and possibly incoherent assertions. Who, as a public speaker, has not done so?

Now, consider for a moment. Suppose, as is now the case with me here, I see little children suffering, men and women starving. I see others rolling in luxury and wealth and opulence, out of the unpaid-for labor of the laborers. I am conscious of this fact. I see the streets of Chicago, as was the case last winter, filled with 30,000 men in compulsory idleness; destitution, misery, and want upon every hand. I see this thing. Then, on the other hand, I see the First Regiment out in a street riot drill, and reading the papers the next morning describing the affair, I am told by the editor of this capitalistic newspaper that the First Regiment is out practicing a street riot drill for the purpose of mowing down these wretches when they come out of their holes that the prosecution talks about here in this case; that the working people are to be slaughtered in cold blood, and that men are drilling upon the streets of the cities of America to butcher their fellowmen when they demand the right to work and partake of the fruits of their labor! Seeing these things, overwhelmed as it were with indignation and pity, my heart speaks. May I not say some things then

that I would not in cooler moments? Are not such outrageous things calculated to arouse the bitterest denunciations?

In this connection I want to call your attention to the way armed men—militiamen and Pinkerton's private army—are used against workingmen, strikers; the way they are used to shoot, to arrest, to put up jobs on them, and carry them out. In the *Alarm* of October 17, 1885, there is printed the following:

#### PINKERTON'S ARMY.

THEY ISSUE A SECRET CIRCULAR OFFERING THEIR SERVICES TO  
CAPITALISTS FOR THE SUPPRESSION OF STRIKERS.

The secretary of the Minneapolis, Minn., Trades and Labor Assembly sends us the following note:

"Minneapolis, Minn., October 6, 1885.

"Editor of the '*Alarm*.'—Dear sir: Please pay your respects to the Pinkerton pups for their extreme kindness to labor. Try to have the Government of your city do away with its metropolitan police and employ the Pinkerton protectors. (Of course this is sarcastic.) The inclosed circular fell into the hands of the Minneapolis Trades Assembly, which thought it not out of place to pass it around. Please insert it in your paper. Yours fraternally,

"T. W. Brosnan."

This letter is under the seal of the Trades and Labor Assembly of the City of Minneapolis, Minn. Then, after referring to the services rendered to the capitalists, corporations, and monopolists during the strikes in all parts of the country during the past year, the circular closes with the following paragraphs, which we give in full as illustrative of the designs of these secret enemies upon organized labor. Let every workingman ponder over the avowed purposes of these armies of thugs. It says:

"The Pinkerton Protective Patrol is connected with Pinkerton's National Detective Agency, and is under the same management. Corporations or individuals desirous of ascertaining the feelings of their employes, whether they are likely to engage in strikes or join any secret labor organization, such as the Knights of Labor, with a view of compelling terms from corporations or employers, can obtain upon application to the superintendent of either of the offices a detective suitable to associate with their employes and obtain this information."

This circular continues:

"At this time, when there is so much dissatisfaction among the labor classes, and secret labor societies are organizing throughout the United States, we suggest whether it would not be well for railroad companies and other corporations, as well as individuals who are extensive employers, to keep a close watch for designing

men among their own employees, who, in the interest of secret labor societies, are influencing their employees to join these organizations and eventually cause a strike. It is frequently the case that by taking a matter of this kind in time, and discovering the ring-leaders, and dealing promptly with them (discovering the ring-leaders, mark you, and dealing promptly with them) serious trouble may be avoided in the future.

"Yours respectfully,

"William A. Pinkerton,

"General Superintendent Western Agency, Chicago.

"Robert A. Pinkerton,

"General Superintendent Eastern Division, New York."

Now here is a concern, an institution which organizes a private army. This private army is at the command and under the control of those who grind the faces of the poor, who keep wages down to the starvation point. This private army can be shipped to the place where it is wanted. Now it goes to the Hocking Valley to subjugate the starving miners; then it is carried across the plains to Nebraska to shoot the striking miners in that region; then it is carried to the East to stop the strike of the factory operatives and put them down. The army moves about to and fro all over the country, sneaks into the labor organizations, worms itself into these labor societies, finds out, as it says, who the ring-leaders are and deals promptly with them. "Promptly," your Honor, "with them." Now, what does that mean? It means this: that some workingman who has got the spirit of a man in his organization, who gets up and speaks out his sentiments, protests, you know, objects, won't have it, don't like these indignities, and says so; he is set down as a ring-leader, and these spies go to work and put up a job on him. If they can not aggravate him and make him, as the *New York Tribune* says, violate the law so they can get hold of him, they go to work and put up a scheme on him, and concoct a conspiracy that will bring him into court. When he is brought into court he is a wage slave; he has got no money—who is he? Why, he stands here at the bar like a culprit. He has neither position, wealth, honor, nor friends to defend him. What is the result? Why, sixty days at the Bridewell or a year in the County jail, in State's prison, or hanged, as the monopolists may determine him to be more or less dangerous to their interests. The matter is dismissed with a wave of the hand. The bailiff carries the "ring-leader" out. The strike is suppressed. Monopoly triumphs and the Pinkertons have performed the work for which they receive their pay.

Now, it was these things that caused the American Group to take an exceeding interest in this manner of treatment on the part of the corporations and monopolies of the country, and we became indignant about it. We expostulated, we denounced it. Could we do otherwise? We are a part and parcel of the miseries brought

about by this condition of things. Could we do otherwise than extrapolate and object to it and resent it? Now, to illustrate what we did, I read to you from the *Alarm* of December 12, 1885, the proceedings of the American Group, of which I was a member, as a sample. I being present at that meeting, and that meeting being reported in this paper, I hold that this report of the meeting, being put into the *Alarm* at that time, is worthy of your credence and respect, as showing what our attitude was upon the question of force and of arms and of dynamite. The article is headed: "Street Riot Drill. Mass Meeting of Working People held at 106 East Randolph Street." This was the regular hall and place of meeting. The article reads:

A large mass meeting of workingmen and women was held by the American Group of the International last Wednesday evening at their hall, 106 East Randolph street. The subject under discussion was the street riot drill of the First Regiment on Thanksgiving day. William Holmes presided. The principal speaker was Mrs. Lucy E. Parsons. She began by saying that the founders of this Republic, whose motto was that every human being was by nature entitled to life, liberty, and the pursuit of happiness, would turn in their graves if they could read and know that a great street riot drill was now being practiced in times of peace. "Let us," said she, "examine into this matter and ascertain, if we can, what this street riot drill of the military is for. Certainly not for the purpose of fighting enemies from without; not for a foreign foe, for if this was the case we would be massing our armies on the sea coast. Then it must be for our enemies within. Now, then, do a contented prosperous and happy people leave their avocations and go out upon the streets to riot? Do young men and maidens who are marrying and given in marriage forsake the peaceful paths of life to become a riotous mob? Then who is the street riot drill for? For whom is it intended? Who is to be shot? When the tramp of the military is heard, and grape and canister are sweeping four streets at a time, as is contemplated by this new fangled drill which was so graphically described in the capitalistic press which gave an account of it, it is certainly not for the purpose of shooting down the bourgeoisie, the wealthy, because this same press makes a stirring appeal to them to contribute liberally to a military fund to put them on a good footing and make the militia twice as strong as it is at present, because their services would soon be needed to shoot down the mob." The speaker then read an extract from a capitalistic account of the street riot drill on Thanksgiving day.

Your Honor, this meeting was held the week following Thanksgiving day, and the drill took place on Thanksgiving day. This article, which is a description of the drill copied from a capitalistic paper, reads as follows:

"As a conclusion the divisions were drawn up in line of battle and there was more firing by companies, by file, and by battalion.

The drill was creditable to the regiment, and the First will do excellent service in the streets in case of necessity. Opportunities, however, are needed for rifle practice, and Col. Knox is anxious to have a range established as soon as possible. Instead of 400 members, the regiment should have 800 members on its rolls. Business men should take more interest in the organization and help put it in the best possible condition to cope with a mob, for there may be need for its services at no distant day."

That article appeared either in the *Times* or *Tribune* of the next day. I don't know which. The speaker says:

"What must be the thought of the oppressed in foreign lands when they hear the tramp of the militia beneath the folds of the stars and stripes? They who first flung this flag to the breeze proclaimed that beneath its folds the oppressed of all lands would find a refuge and a haven and protection against the despotism of all lands. Is this the case today, when the counter tramp of 2,000,000 homeless wanderers is heard throughout the land of America—men strong and able and anxious and willing to work, that they may purchase for themselves and their families food; when the cry of discontent is heard from the working classes everywhere, and they refuse longer to starve and peaceably accept a rifle diet and die in misery according to law, and order is enforced by the military drill—is this military drill for the purpose of sweeping them down as a mob with grape and canister upon the street?"

This is the language of the speaker at the meeting:

"We working people hear these ominous rumblings, which create inquiry as to their origin. A few years ago we heard nothing of this kind; but great changes have taken place during the past generation. Charles Dickens, who visited America forty years ago, said that what surprised him most was the general prosperity and equality of all people, and that a beggar upon the streets of Boston would create as much consternation as an angel with a flaming sword. What of Boston today? Last winter, said a correspondent of the *Chicago Tribune*, writing from that city, 30,000 persons were destitute, and there were whole streets of tenant houses where the possession of a cooking stove was regarded as a badge of aristocracy, the holes of which were rented to other less wealthy neighbors for a few pennies per hour. So, too, with New York, Chicago, and every other industrial center in this broad land. Why is this? Have we had a famine? Has nature refused to yield her harvest? These are grave and serious questions for us, the producers and sufferers, to consider, at least. Take a glance at the wealth of this country. In the past twenty years it has increased over \$20,000,000,000. Into whose hands has the wealth found its way? Certainly not into the hands of the producers, for if it had there would be no need for street riot drills. This country has a population of 55,000,000, and a statistical compilation shows that there are in the cities of New York, Philadelphia, and Boston twenty men who own as their private property over \$750,000,000, or about one-

twenty-sixth of the entire increase which was produced by the labor of the working class, these twenty individuals being as one in 3,000,000. In twenty years these profit-mongers have fleeced the people of the enormous sum of \$750,000,000—and only three cities and twenty robbers heard from! A Government that protects this plundering of the people—a Government which permits the people to be degraded and brought to misery in this manner is a fraud upon the face of it, no matter under what name it is called or what flag floats over it; whether it be a Republic, a Monarchy, or an Empire," said the speaker. "The American flag protects as much economic despotism as any other flag on the face of the earth today to the ratio of population. This being the case, of what does the boasted freedom of the American workingman consist? Our fathers used to sing:

Come along, come along; make no delay;  
Come from every nation, come from every way;  
Come along, come along; don't be alarmed—  
Uncle Sam is rich enough to give us all a farm.

The "stars and stripes" in those days floated upon every water as the emblem of the free, but today it obeys only the command and has become the ensign of monopoly and corporations, of those who grind the face of the poor and rob and enslave the laborer. Could Russia do more than drill in its streets to kill the people? But alas! Americans creep and crawl at the foot of wealth and adore the golden calf. Can a man amass millions without despoiling the labor of others? We all know he can not. American workmen seem to be degenerating. They do not seem to understand what liberty and freedom really consist of. They shout themselves hoarse on election day—for what? For the miserable privilege of choosing their master; which man shall be their boss and rule over them; for the privilege of choosing just who are the bosses and who shall govern them. Great privilege! These Americans—sovereigns—millions of them do not know where they could get a bed or a supper. Your ballot—what is it good for? Can a man vote himself bread, or clothes, or shelter, or work? In what does the American wage-slave's freedom consist? The poor are the slaves of the rich everywhere. The ballot is neither a protection against hunger nor against the bullets of the military. Bread is freedom, freedom bread. The ballot is no protection against the bullets of those who are practicing the street-riot drills in Chicago. The ballot is worthless to the industrial slaves under these conditions. The palaces of the rich overshadow the homes or huts of the poor, and we say, with Victor Hugo, that the paradise of the rich is made out of the hells of the poor. The whole force of the organized power of the Government is thrown against the workers, whom the so-called better class denominate a mob. Now, when the workers of America refuse to starve according to "law and order,"



and when they begin to think and act, why, the street-riot drill begins. The enslavers of labor see the coming storm. They are determined, cost what it may, to drill these people and make them their slaves by holding in their possession the means of life as their property, and thus enslave the producers. Workingmen—we mean the women, too—arise! Prepare to make and determine successfully to establish the right to live and partake of the bounties to which all are equally entitled. Agitate, organize, prepare to defend your life, your liberty, your happiness against the murderers who are practicing the street-riot drill on Thanksgiving day.

'Tis the shame of the land that the earnings of toil,  
Should gorge the god Mammon, the tyrant, the spoiler.  
Every foot has a logical right to the soil,  
And the product of toil is the meed of the toiler.  
The hands that disdain  
Honest industry's stain  
Have no share in its honor, no right to its gain,  
And the falsehood of wealth or worth shall not be  
In "the home of the brave and the land of the free."

Now, I challenge your Honor to find a sentence or an utterance in that meeting—and that is one of the fullest reported of the many meetings held by the American Group for public discussion of such matters as the Thanksgiving drill of the First Regiment—I challenge you to find a single word or utterance there that is unlawful, that is contrary to the constitution, or that is in violation of free speech, or that is in violation of free press, or that is in violation of public assembly or of the right of self-defense. And that is our position, and has been all the while. Imagine for a moment the First Regiment practicing the street-riot drill as it was described—learning how to sweep four streets from the four corners at once. Who? The *Tribune* and *Times* say "the mob." Who are the mob? Why, dissatisfied people, dissatisfied working men and women; people who are working for starvation wages, people who are on a strike for better pay—these are the mob. They are always the mob. That is what the riot drill is for.

Suppose a case that occurs. The First Regiment is out with 1,000 men, armed with the latest improved Winchester rifles. Here are the mobs; here are the Knights of Labor and the trades unions, and all the organizations, without arms. They have no treasury, and a Winchester rifle costs \$18. They cannot purchase those things. We can not organize an army. It takes capital to organize an army. It takes as much money to organize an army as to organize industry, or as to build railroads; therefore, it is impossible for the working classes to organize and buy Winchester rifles. What can they do? What must they do?

Your Honor, the dynamite bomb, I am told, costs 6 cents. It

can be made by anybody. The Winchester rifle costs \$18. That is the difference. Am I to be blamed for that? Am I to be hanged for saying this? Am I to be destroyed for this? What have I done? Go dig up the ashes of the man who invented this thing. Find his ashes and scatter them to the winds because he gave this power to the world. It was not me. Gen. Sheridan—he is the commander-in-chief of the United States army, and in his report to the President and Congress two years ago he had occasion to speak of the possible labor troubles that may occur in the country, and what did he say? In this report he said that dynamite was a lately discovered article of tremendous power, and such was its nature that people could carry it around in the pockets of their clothing with perfect safety to themselves, and by means of it they could destroy whole cities and whole armies. This was Gen. Sheridan. That is what he said. We quoted that language and referred to it. I want to say another word about dynamite before I pass on to something else.

I am called a dynamiter. Why? Did I ever use dynamite? No. Did I ever have any? No. Why, then, am I called a dynamiter? Listen, and I will tell you. Gunpowder in the fifteenth century marked an era in the world's history. It was the downfall of the mail armor of the knight, the freebooter, and the robber of that period. It enabled the victims of the highway robbers to stand off at a distance in a safe place and defend themselves by the use of gunpowder, and make a ball enter and pierce into the flesh of their robbers and destroyers. Gunpowder came as a democratic instrument. It came as a republican institution, and the effect was that it immediately began to equalize and bring about an equilibrium of power. There was less power in the hands of the nobility after that; less power in the hands of the king; less power in the hands of those who would plunder and degrade and destroy the people after that.

So today dynamite comes as the emancipator of man from the domination and enslavement of his fellowman. (The JUDGE showed symptoms of impatience.) Bear with me now. Dynamite is the diffusion of power. It is democratic; it makes everybody equal. Gen. Sheridan says: "Arms are worthless." They are worthless in the presence of this instrument. Nothing can meet it. The Pinkertons, the police, the militia are absolutely worthless in the presence of dynamite. They can do nothing with the people at all. It is the equilibrium. It is the annihilator. It is the disseminator of power. It is the downfall of oppression. It is the abolition of authority; it is the dawn of peace; it is the end of war, because war cannot exist unless there is somebody to make war upon, and dynamite makes that unsafe, is undesirable, and absolutely impossible. It is a peace-maker; it is man's best and last friend; it emancipates the world from the domineering of the few over the many, because all Government, in the last resort, is violence; all

law, in the last resort, is force. Force is the law of the universe; force is the law of nature, and this newly discovered force makes all men equal, and therefore free. It is idle to talk of rights when one does not possess the power to enforce them. Science has now given every human being that power. It is proposed by the prosecution here to take me by force and strangle me on the gallows for these things I have said, for these expressions. Now, force is the last resort of tyrants; it is the last resort of despots and of oppressors, and he who would strangle another because that other does not believe as he would have him, he who will destroy another because that other will not do as he says, that man is a despot and a tyrant.

Now, I speak plainly. Does it follow, because I hold these views, that I committed or had anything to do with the commission of that act at the Haymarket? Does that follow? Why, you might just as consistently charge Gen. Phil Sheridan with the act, and for the same reason, for while he did not go into the matter perhaps as extensively in his eulogium upon dynamite as I have done, yet he furnished me the text from which I have drawn my knowledge of this thing. But, you say, my speeches were sometimes extravagant, unlawful. During the discussion of the question of the extension of chattel slavery into the new Territories, into Kansas and the West, while Charles Sumner was yet a member of the United States Senate, and that gallant man stood as the champion of freedom upon that floor, he was expostulated with on one occasion and reprimanded by a friend, who said to him: "Sumner, you are not expedient; you must have more policy about what you say; you should not express yourself in this manner; you should not be so denunciatory and fanatical against this slavery, this enslavement. I know it is wrong; I know it should be denounced, but keep inside of the law; keep inside of the constitution."

Your Honor, I quote from the speech of Charles Sumner, that great American, in answer and in reply to that remark. Said he:

"Anything for human rights is constitutional. No learning in books, no skill acquired in courts, no sharpness of forensic dealings, no cunning in splitting hairs can impair the vigor thereof. This is the supreme law of the land, anything in the constitution or laws of any State to the contrary notwithstanding."

I never said anything that could equal that in lawlessness. I never was as lawless in my expression as that. Go, gentlemen of the prosecution, dig up the ashes of Sumner and scatter them in disgrace to the wind, tear down the monument that the American people have erected to his honor, and erect thereon some emblem of your contempt.

What are the facts about the Haymarket meeting? The meeting at 107 Fifth avenue had already been called, and at half-past 7 o'clock I left home with my wife, Mrs. Holmes, and the children.

We got to Halsted street. Two reporters seeing me, thought there was a chance to get an item, and came over to me—the *Times* man and the *Tribune* man, I forget their names. "Hello, Parsons, what is the news?" says one. "I don't know anything." "Going to be a meeting here tonight?" "Yes, I guess so." "Going to speak?" "No." "Where are you going?" "I have got another meeting on hand tonight." And some playful remark was made. I slapped one of them on the back. I was quite well acquainted with the men, and we made one or two brief remarks, and—as they testified on the stand—I got on the car right then and there with my wife and two children, in company with Mrs. Holmes. I took the car, and they saw that. I went down to Fifth avenue. When I got down there I found four or five other ladies there, about—well, probably twelve or fifteen—men. It was about 8:30 o'clock when we opened—I guess it was. We staid there about half an hour. We settled the business. About the time we were through with it a committee came from the Haymarket, saying: "Nobody is over there but Spies. There is an awful big crowd, 3,000 or 4,000 people. For God's sake send somebody over. Come over, Parsons; come over, Fielden." Well, we went there. The meeting was adjourned and we all went over there together—all of us; my wife, Mrs. Holmes, two other ladies, and my two little children, went over to the Haymarket meeting. And these ladies sat ten feet behind the wagon from which I spoke.

Your Honor, is it possible that a man would go into the dynamite-bomb business under these conditions and those circumstances? It is incredible. It is beyond human nature to believe such a thing possible, absolutely.

The verdict was against Socialism, as said by the *Chicago Times* the day after the verdict.

"In the opinion of many thoughtful men, the labor question has reached a point where blood-letting has become necessary," says the *Chicago Iron-Monger*.

"The execution of the death penalty upon the Socialist malefactors in Chicago will be in its effect the execution of the death penalty upon the Socialistic propaganda in this country. The verdict of death pronounced by a Chicago jury and court against these Socialist malefactors in Chicago is the verdict of the American people against the crime called Socialism," says the *Chicago Times*. By the American people the *Times* means the monopolists.

In more familiar words, as used heretofore by the *Times*, "other workingmen will take warning from their fate, and learn a valuable lesson." The *Times* in 1878 advised that "handgrenades (bombs) should be thrown among the striking sailors," who were striving to obtain higher wages, "as by such treatment they would be learned a valuable lesson, and other strikers would take warning from their fate." So it seems, "handgrenades for strikers," and "the gallows for Socialists," are recommended by the organ of monopoly as a terror to both.

The jury was a packed one; the jury was composed of men who arrogate to themselves the right to dictate to and rob the wage-workers, whom they regard as their hired men; they regard workmen as their inferiors and not "gentlemen." Thus a jury was obtained, whose business it was to convict us of Anarchy whether they found any proof of murder or not. The whole trial was conducted to condemn Anarchy. "Anarchy is on trial," said Mr. Ingham. "Hang these eight men and save our institutions," shouted Grinnell. "These are the leaders; make an example of them," yelled the prosecution in addressing the Court and jury. Yes, we are Anarchists, and for this, your Honor, we stand condemned. Can it be that men are to suffer death for their opinions? "These eight defendants," said the State's Attorney to the jury, "were picked out and indicted by the grand jury. They are no more guilty than are the thousands who follow them. They were picked out because they were leaders. Convict them and our society is safe," shouted the prosecution. And this is America, the land for which our fathers fought and freely shed their blood that we, their posterity, might enjoy the right of free speech, free opinion, free press, and unmolested assemblage.

When I saw the day fixed for the opening of this trial, knowing I was an innocent man, and also feeling that it was my duty to come forward and share whatever fate had in store for my comrades, and also to stand, if need be, on the scaffold, and vindicate the rights of labor, the cause of liberty, and the relief of the oppressed, I returned. How did I return? It is interesting, but it will take time to relate it, and I will not state it. I ran the gauntlet. I went from Waukesha to Milwaukee. I took the St. Paul train in the morning at the Milwaukee depot and came to Chicago; arrived here at 8:30, I suppose, in the morning. Went to the house of my friend, Mrs. Ames, on Morgan street. Sent for my wife, and had a talk with her. I sent word to Capt. Black that I was here and prepared to surrender. He sent word back to me that he was ready to receive me. I met him at the threshold of this building, and we came up here together. I stood in the presence of this Court. I have nothing, even now, to regret.

**JUDGE GARY.** I am quite well aware that what you have said, although addressed to me, has been said to the world; yet nothing has been said which weakens the force of the proof, or the conclusions therefrom upon which the verdict is based. You are all men of intelligence, and know that, if the verdict stands, it must be executed. The reasons why it shall stand I have already sufficiently stated in deciding the motion for a new trial.

I am sorry beyond any power of expression for your un-

happy condition, and for the terrible events that have brought it about. I shall address to you neither reproaches nor exhortation. What I shall say shall be said in the faint hope that a few words from a place where the people of the State of Illinois have delegated the authority to declare the penalty of a violation of their laws, and spoken upon an occasion so solemn and awful as this, may come to the knowledge of and be heeded by the ignorant, deluded and misguided men who have listened to your counsels and followed your advice. I say in the faint hope; for if men are persuaded that because of business differences, whether about labor or anything else, they may destroy property and assault and beat other men and kill the police if they, in the discharge of their duty, interfere to preserve the peace, there is little ground to hope that they will listen to any warning.

It is not the least among the hardships of peaceable, frugal and laborious people to endure the tyranny of mobs who, with lawless force, dictate to them, under penalty of peril to limb and life, where, when and upon what terms they may earn a livelihood for themselves and their families. Any government that is worthy of the name will strenuously endeavor to secure to all within its jurisdiction freedom to follow their lawful avocations in safety for their property and their persons, while obeying the law; and the law is common sense. It holds each man responsible for the natural and probable consequences of his own acts. It holds that whoever advises murder is himself guilty of the murder that is committed pursuant to his advice, and if men band together for forcible resistance to the execution of the law, and advise murder as a means of making such resistance effectual,—whether such advice be to one man to murder another or to a numerous class to murder men of another class,—all who are so banded together are guilty of any murder that is committed in pursuance of such advice.

The people of this country love their institutions. They love their property. They will never consent that by violence and murder their institutions shall be broken down, their

homes despoiled and their property destroyed. And the people are strong enough to protect and sustain their institutions and to punish all offenders against their laws. And those who threaten danger to civil society if the law is enforced are leading to destruction whoever may attempt to execute such threats.

The existing order of society can be changed only by the will of the majority. Each man has the full right to entertain and advance, by speech and print, such opinions as suit himself; and the great body of the people will usually care little what he says. But if he proposes murder as a means of enforcing them he puts his own life at stake. And no clamor about free speech or the evils to be cured or the wrongs to be redressed will shield him from the consequences of his crime. His liberty is not a license to destroy. The toleration that he enjoys he must extend to others, and he must not arrogantly assume that the great majority are wrong and that they may rightfully be coerced by terror or removed by dynamite.

It only remains that for the crime you have committed—and of which you have been convicted after a trial unexampled in the patience with which an outraged people have extended you every protection and privilege of the law which you derided and defied—the sentence of that law be now given.

In form and detail that sentence will appear upon the records of the court. In substance and effect it is that the defendant Neebe be imprisoned in the State Penitentiary at Joliet at hard labor for the term of fifteen years.

And that each of the other defendants, between the hours of ten o'clock in the forenoon and two o'clock in the afternoon of the third day of December next, in the manner provided by the statute of this State, be hung by the neck until he is dead. Remove the prisoners.

*Mr. Black.* Your Honor knows that we intend to take an appeal to the Supreme Court in behalf of all the defendants. I ask that there be a stay of execution in the case of Mr. Neebe until the 3d day of December.

*Mr. Grinnell.* If the Court please, that is a matter that usually stands between counsel for the defendants and the State. Every possible facility will be allowed and everything will be granted you in that particular that good sense and propriety dictate.

*Mr. Black.* That is sufficient.

**THE APPEALS TO THE HIGHER COURTS AND THE PETITIONS TO THE GOVERNOR.—THE COMMUTATION OF THE SENTENCES OF FIELDEN AND SCHWAB.—THE SUICIDE OF LINGG.**

November 25, 1886, a supersedeas was issued by the Supreme Court of Illinois staying the executions until the case could be heard in that court, and in March, 1887, it was argued there in their behalf by their leading counsel, Mr. Black and Leonard Swett,<sup>23</sup> and for the State, by George Hunt, Attorney General of Illinois and the counsel for the People on the trial. On September 14, 1887, the conviction was affirmed,<sup>24</sup> Chief Justice Magruder<sup>24</sup> delivering the opinion of the Court. They then appealed to the Supreme Court of the United States, employing three great lawyers to plead their cause—John Randolph Tucker<sup>25</sup> of Virginia, Roger A. Pryor<sup>26</sup> of

<sup>23</sup> SWETT, LEONARD. (1825-1887.) Born Turner, Me., and died in Chicago, Ill.; was a leading politician of the State of Illinois, a friend and partner of Abraham Lincoln, and after the war practiced law in Chicago until his death.

<sup>23</sup> 122 Ill. Rep. 1.

<sup>24</sup> MAGRUDER, BENJAMIN DRAKE. (1838-1910.) Born Natchez, Miss.; graduated Yale, 1852; Univ. of La. (law), 1858; admitted to bar and practiced in Memphis, Tenn., 1859-1861; removed to Chicago and practiced there, 1861-1885, 1906-1910; Master in Chancery, 1868-1885; Judge Supreme Court of Illinois, 1885-1906; LLD. Yale, 1906.

<sup>25</sup> TUCKER, JOHN RANDOLPH. (1823-1897.) Born Winchester, Va.; Attorney General Virginia, 1857-1863; Professor of Law Wash. Coll., and a law writer of note; member of United States House of Representatives, 1875-1887; President American Bar Association, 1892; Died Lexington, Va.

<sup>26</sup> PRYOR, ROGER ATKINSON. (1828-1918.) Born Petersburg, Va.; graduated Hampden-Sidney Coll. and University of Va.; minister to Greece, 1885; member U. S. Congress, 1859-1861; member Confederate Congress, 1862; entered the Confederate service as Colonel and rose to Brigadier General. After the war removed to New York and entered the practice of law; Judge Common Pleas Court, New York City, 1890-1894; Judge Supreme Court, 1894-1906.



New York, and Benjamin F. Butler<sup>27</sup> of Massachusetts. But on November 2, 1887, that tribunal unanimously refused to interfere with the sentence,<sup>28</sup> Chief Justice Waite delivering the judgment.<sup>29</sup>

A great number of petitions were now presented to Governor Oglesby<sup>30</sup> of Illinois who on November 10, 1887, announced his decision in the following order:

State of Illinois, Executive Office, Springfield, Nov. 10.

On the 20th day of August, 1886, in the Cook County Criminal Court, August Spies, Albert R. Parsons, Samuel Fielden, Michael Schwab, Adolph Fischer, George Engel and Louis Lingg were found guilty by the verdict of the jury and afterward sentenced to be hanged for the murder of Mathias J. Degan.

An appeal was taken from such finding and sentence, to the Supreme Court of the State. That court, upon a final hearing and after mature deliberation, unanimously affirmed the judgment of the court below.

The case now comes before me by petition of the defendants, for consideration as Governor of the State, if the letters of Albert R. Parsons, Adolph Fischer, George Engel and Louis Lingg demand-

<sup>27</sup> BUTLER, BENJAMIN FRANKLIN. (1818-1893.) Born Deerfield, N. H.; graduated Waterville Coll. (Me.) 1838; admitted to bar, 1840, and began practice at Lowell, Mass.; member Constitutional Convention, 1853; State Senator, 1859; entered the Civil War and became a Major General; member U. S. House of Representatives, 1866-1878; Governor of Massachusetts, 1882; died Washington, D. C.

<sup>28</sup> 123 U. S. Sup. Ct. Rep. 131.

<sup>29</sup> WAITE, MORRISON REMICK. (1816-1888.) Born Lyme, Conn.; son of Chief Justice Waite of Connecticut (1787-1869); graduated Yale in famous class of 1837, of which William M. Evarts, Benjamin Silliman and Samuel J. Tilden were members; studied law in his father's office and in the office of Samuel M. Young of Maumee City, Ohio, whose partner he became after his admission to the bar in 1839. The firm removed to Toledo in 1850, where he formed a partnership with his brother Richard; leader of the Ohio bar; member State Legislature, 1849; counsel for United States with Caleb Cushing and William M. Evarts before the Geneva Arbitration Commission, 1871-1872; President of Ohio Constitutional Convention, 1874; Chief Justice United States Supreme Court, 1874-1888; LL.D. Yale, 1872; Kenyon, 1874; Univ. of Ohio, 1879; died Washington, D. C.

<sup>30</sup> OGLESBY, RICHARD JAMES. (1824-1899.) Born Oldham Co., Ky. General in the Civil War; Governor of Illinois, 1865-1869; 1873; 1885-1889; United States Senator, 1873-1879. Died Elkhart, Ind.

ing "unconditional release," or, as they express it, "liberty or death," and protesting in the strongest language against mercy or commutation of the sentence pronounced against them, can be considered petitions.

Pardon, could it be granted, which might imply any guilt whatever upon the part of either of them, would not be such a vindication as they demand. Executive intervention upon the grounds insisted by the four above-named persons could in no proper sense be deemed an exercise of the constitutional power to grant reprieves, commutations and pardons, unless based upon the belief on my part of their entire innocence of the crime of which they stand convicted.

A careful consideration of the evidence in the record of the trial of the parties, as well as of all alleged and claimed for them outside of the record, has failed to produce upon my mind any impression tending to impeach the verdict of the jury or the judgment of the trial court or of the Supreme Court, affirming the guilt of all these parties.

Satisfied, therefore, as I am, of their guilt, I am precluded from considering the question of commutation of the sentences of Albert R. Parsons, Adolph Fischer, George Engel and Louis Lingg to imprisonment in the penitentiary, as they emphatically declare they will not accept such commutation. Samuel Fielden, Michael Schwab and August Spies unite in a petition for "executive clemency." Fielden and Schwab, in addition, present separate and supplementary petitions for the commutation of their sentences. While, as said above, I am satisfied of the guilt of all the parties, as found by the verdict of the jury, which was sustained by the judgments of the courts, a most careful consideration of the whole subject leads me to the conclusion that the sentence of the law as to Samuel Fielden and Michael Schwab may be modified as to each of them, in the interest of humanity, and without doing violence to public justice.

As to the said Samuel Fielden and Michael Schwab, the sentence is commuted to imprisonment in the penitentiary for life.

As to all the other above-named defendants, I do not feel justified in interfering with the sentence of the Court. While I would gladly have come to a different conclusion in regard to the sentence of defendants August Spies, Adolph Fischer, George Engel, Albert R. Parsons and Louis Lingg, I regret to say that under the solemn sense of the obligations of my office I have been unable to do so.

Richard J. Oglesby, Governor.

On the next morning Fielden and Schwab were removed to the penitentiary at Joliet.

On November 10th Lingg committed suicide in his cell with a bomb which he exploded while holding it between his teeth.

## THE EXECUTIONS.

*November 11, 1887.*

Spies, Engel, Fischer and Parsons were hanged today in the Chicago jail.

The following account of the execution is given in Schaack's History of the Anarchists. (See *ante*, p. 12.)

At 11:30 o'clock, Sheriff Matson, accompanied by Deputies Hartke, Cleveland, Spears and Peters, County Physician Moyer and Jailor Folz, started from the jail office, and repaired to the cell occupied by Spies. The iron-barred door was opened, and Spies advanced to meet the Sheriff. Mr. Matson at once proceeded to read the death warrant. Spies listened with folded arms, and there was no indication of nervousness nor trace of emotion. His feelings could not be divined from his demeanor. The facial muscles remained unmoved, and no color rose to flush the usual paleness of the cheeks, nor was the pallor of his face heightened when the last fearful words of the warrant had been read. The Sheriff was visibly agitated, and his voice was at times tremulous. On the conclusion of the reading, Spies merely bowed his head slightly, and then stepped out into the corridor in obedience to the deputies' request. Around his chest was placed a leather belt about an inch and a half wide, with which to pinion his arms just above the elbows, and his hands were handcuffed behind his back. Then a white muslin shroud was thrown over him and fastened slightly at the neck and waist.

While these details were being carried out, the Sheriff was at Fischer's cell, and the same programme of preparation was gone through with. The Anarchist was manacled, pinioned and shrouded, and he gazed upon each operation with curious interest, but with no sign of perturbation or weakness. Now and then he faintly smiled, and he seemed more concerned about the trepidation of the deputies than about his own situation.

Meantime, the death warrant had been read to Engel, who was soon arrayed in the habiliments of death. He stood it all unflinchingly, and seemed even less concerned than his comrades. There was also an entire absence of affected indifference.

Parsons was the last to step out of his cell, and, as he stood receiving the ghastly paraphernalia, he endeavored to display no sign of fear. He bore up well, although he evidently wrestled with his inner feelings.

The solemn march to the scaffold began with the Sheriff in the lead. In the east corner of the north corridor stood the scaffold. Below and before it were benches for the two hundred spectators. The death procession moved slowly and with measured tread. As it neared the corner the footfalls became distinctly audible to those

assembled. When the shuffling of feet on the iron stairway leading to the first gallery, which was on a level with the gallows, was heard, the buzz of conversation ceased, and every eye was centered on the spot whence the Anarchists would be first seen. It was only a moment, and then Spies, Fischer, Engel and Parsons, one after the other, came into view, each with a deputy by his side. Having reached their respective places on the trap, they faced the spectators. Spies, the moment he caught sight of the audience, gave it a contemptuous look, and thereafter his eyes seemed centered on some invisible object down the corridor above the heads of the spectators. Fischer merely looked down for a moment on the uncovered heads below, and then his eyes wandered in various directions. Engel seemed the most unconcerned of all, and swept the audience with a cool glance as though it might have been composed of friends. Parsons was superbly stiff, and his gaze, after a snap at those below, firmly set itself in the direction of the cell tiers.

As soon as those on the platform had taken the positions assigned, the lower limbs of the four Anarchists were pinioned. This was done very quickly. The nooses dangling overhead were then lifted from their hooks, and Spies was the first to have the rope placed around his neck. The noose had been slipped a little too tight, and, noticing the uneasiness it gave him, the deputy instantly loosened it a trifle. Spies gave a faint smile in acknowledgement of the kindness and again seemed at ease. Not a tremor was visible during the adjustment of the rope. Another deputy next placed the rope around the neck of Fischer, who, to facilitate its proper adjustment, bent his tall form slightly and received it with head inclined until the knot rested in its proper place under the left ear. Engel received the noose as if it had been a decoration about to be placed upon his shoulders by friendly hands, and several times he turned his head around to exchange a word or two with the deputy, accompanying his whispered utterances with a smile. Parsons stood unmoved when his turn came, and appeared entirely indifferent to the operation. Loose-fitting white caps were now produced, and, as these came in sight, Fischer and Engel turned their heads slightly to the left and spoke a second to their respective deputies. Spies first, Fischer next, then Engel, and Parsons last, was the order in which the caps were adjusted, and the heads had no sooner been enveloped, shutting out forever the light of day, than all knew that the fatal moment had arrived. During all the preliminary preparations not a relaxation of nerve or an expression of anguish or despair had been observed. Now the tension of silence was painful. But suddenly there broke from the lips of Spies an exclamation that startled the auditors as if by a shock.

"You may strangle this voice," said he, in clear but subdued tones, "but my silence will be more terrible than speech."

Spies had scarcely uttered his last words, when Fischer shouted: "This is the happiest moment of my life. Hoch die Anarchie!"

Engel immediately caught up the sentiment, and in a strong voice, and with a pronounced German accent, cried:

"Hurrah for Anarchy!"

Parsons then lifted his voice, and in firm, deliberate tones, exclaimed:

"O men of America!"

Then, lowering his voice to an appealing accent:

"Mr. Sheriff, may I be permitted to say a few words?"

Raising his voice again, without waiting for an answer, and continuing in the same breath, he said:

"O men of America, let the voice of the people be heard."

The last word had barely escaped his lips, when the signal was given to the unknown and hidden man in the sentry-box back of the platform, the rope controlling the trap was cut, and four bodies shot downward into space. The intervals between the adjustment of the caps, the utterances and the drop were only a few moments, but they were moments that seemed like hours. The first instant after the drop, the bodies all seemed motionless, but immediately one after the other began violent contortions, the limbs contracted, the breasts swelled with spasms, and the arms shook convulsively. It was fully eight minutes before the last was limp and lifeless. The bodies, however, were left hanging for twenty-six minutes, and then they were deposited in plain coffins, ready to be turned over to their relatives. The jury selected by the Sheriff to pass upon the death, as required by law, next viewed the remains and then signed the usual legal certificates. Those composing the jury were Dr. Ferdinand Henrotin, Dr. Denslow Lewis, Dr. G. A. Hall, Dr. Harry Brown, Dr. J. B. Andrews, Dr. M. W. Thompson, John N. Hills, William B. Keep, ex-Sheriff John Hoffman, Edwin Wynn, George Lanz, George M. Moulton, John L. Woodward and H. L. Anderson.

It was subsequently ascertained that the necks of none of the Anarchists had been broken, and that death had come in each case through strangulation.

### PARDONING OF FIELDEN, NEEBE AND SCHWAB.

On June 26, 1893, Governor Altgeld<sup>21</sup> of Illinois granted an absolute pardon to Samuel Fielden, Michael Schwab and Oscar Neebe.

<sup>21</sup> ALTGELD, JOHN PETER. (1847-1902.) Born in Germany and brought to this country by his parents, who settled in Mansfield, Ohio; entered Union Army at beginning of Civil War and served until its close; taught school, then studied law, and admitted to bar, 1869; Prosecuting Atty. Andrew Co., Mo., 1874; Judge Superior Court, Chicago, 1886-1891; Governor of Illinois, 1893-1897.

## THE TRIAL OF JOHN WEEKS FOR LARCENY. NEW YORK CITY, 1818.

### THE NARRATIVE.

Brought to trial before three judges and a jury in New York City for stealing three tumblers from the house of James York, the prisoner admitted that the tumblers were in his possession when he was arrested but said that they had been given him by a black man, and he related particularly when, where and under what circumstances he had received them. The only witness was the owner who said the tumblers were his and had been stolen from his house, but he had never seen the prisoner before; and there was no other evidence to connect Weeks with the theft. The Presiding Judge thought the proof was not sufficiently strong on which to convict and he told the jury that they could not separate the admission of the prisoner that he had possession of the tumblers from his statement as to how this came about. But the two other judges said the jury would be perfectly justified in believing the prisoner when he confessed he had the stolen property in his possession and in rejecting his story that they came into his possession honestly.

The jury took the view of the Presiding Judge and acquitted the prisoner.

### THE TRIAL.<sup>1</sup>

*In the Court of General Sessions, New York City, October, 1818.*

HON. CADWALLADER D. COLDEN,<sup>2</sup> *Mayor.*

JAMES WARNER, *Associate Justice.*

ANTHONY L. UNDERHILL, *Alderman.*

*October 10.*

The prisoner having been indicted for stealing three tum-

<sup>1</sup> Wheeler's Criminal Cases, See 1 Am. St. Tr. 108.

<sup>2</sup> See 1 Am. St. Tr. 6.

blers from the dwelling house of James York in the City of New York, he pleaded not guilty.

*Pierre C. Van Wyck*,<sup>s</sup> District Attorney, for the People.

The *Prisoner* was without counsel.

#### THE EVIDENCE.

James York. Am the owner of the stolen property; the three tumblers were stolen from my house a month ago; know nothing of the prisoner; never saw the tumblers or either of them in his possession, nor after they had been stolen, until they were shown to me in the police office, when the prisoner was there under examination.

The *District Attorney* read the examination of the prisoner, taken at the time above referred to, by the police magistrates. In this

the prisoner denied that he had stolen the property; he admitted, however, that he had had possession of the tumblers, but stated that they had been given to him by a black man; and in the examination he related particularly, when and where, and under what circumstances he had received them; there was no other testimony whatever to charge the prisoner with the possession of the stolen property, or to connect it in any way with him.

The MAYOR thought the testimony was not sufficient to convict the prisoner.

JUSTICE WARNER and ALDERMAN UNDERHILL thought the prisoner's confession that he had had a part of the stolen property in his possession would warrant the jury in finding him guilty.

*Mr. Van Wyck* addressed the jury in support of the opinion expressed by the majority of the Court.

The MAYOR. Unfortunately there is a difference in the opinions of the bench, as to the law which applied to this case. When it so happened it was the duty of the judges to give their opinions seriatim; and the jury, who in this, as in every other criminal case, were judges of the law as well as of the fact, were to render their verdict as their judgment should be influenced by the reasoning that might be offered to them. For his own part, although he spoke with great deference and respect to his associate judges, he could not avoid saying, that he felt an entire persuasion, that the rules

<sup>s</sup> See 10 Am. St. Tr. 567.

of law, as well as the obvious dictates of justice were entirely opposed to a conviction upon the testimony which was before the jury.

It was sufficiently proved that the property had been stolen, but there was not a particle of testimony to raise a presumption even that the prisoner was the thief, nor the slightest proof that he had ever been in possession of any part of the property, but his own confession; and his acknowledgment that he had been in possession of one of the stolen articles, was connected with a statement of the manner in which he had obtained the article, upon which statement you may with just the same propriety believe him innocent entirely, as first to take from his own lips the fact that he had possession, and then presume upon that fact that he stole the property.

It was a general rule, that when a person was found in possession of stolen property, he should be considered and treated as if he were the thief, unless he could show that he came by it honestly. It is obvious that this rule is sufficiently rigid, and it is easy to conceive that a person may find himself possessed of property that has been feloniously taken, without being able to call witnesses to prove that he obtained it innocently. But it is a necessary rule, and unless courts and juries are governed by it, we may almost as well abandon the attempt to punish the crime to which it relates. It is true, the guiltless may be the victims of its application, but so they may be of every other general rule. The imperfections of our nature oblige us to apply to the investigation of criminal charges, such rules as are generally subservient to the administration of justice; and if they should sometimes induce the conviction of the innocent, it must be considered that such sacrifices are inevitable, while the ministers of justice are but human.

I admit, therefore, the rule to be that where a person is found in the possession of stolen property, we are bound to consider him as the thief unless he satisfies us that he obtained it honestly. -



In this case what evidence have we that he had the possession of the articles in question? Nothing but his own confession. But have we not the same evidence that he did not steal it?

It is not denied but that all a prisoner may say upon his examination, as well that which may be exculpatory, as that which may tend to criminate him, is to be taken by the magistrate; nor but that the whole is to be read to the jury, if any part be read. I admit that the jury are not bound under all circumstances to believe the whole. That part which criminales, is to be taken most strongly against the party making the confession, because it is to be presumed that no one will say more than the truth against himself. Nor are the jury bound to believe that part of an examination which is exculpatory, if the facts which it states are contradicted by other testimony, and even if there be no contradictory testimony, if the facts themselves are absurd and inconsistent, they may be rejected. But that is not the case here. The prisoner tells us how he became possessed of the property; that he may have obtained the article in the way he states, there is precisely the same ground to believe, as there is to presume he was the thief. You have his word for it that he came by the article honestly; you have only his word for it that he had possession of the article at all; upon that possession which his own word only proves, you are called upon to presume him the thief. But if the jury are not to be governed by the exculpatory part of an examination where the facts are not contradicted, nor improbable, inconsistent or absurd, why should the whole be read to the jury? The rule requiring this is senseless, if the jury are bound to reject the exculpatory parts. To be consistent, we should allow the public prosecutor to read such parts only as he may choose to select. Indeed, it is useless that the magistrates should record more than may tend to criminate! But who could hear of such a course without being shocked with its shameful injustice? It would even exceed in inhumanity the practice of the inquisition; for it is said that its ministers noted the groans of

their victims, that the holy fathers might at least pretend to judge how much of a confession was the result of torture, and how much of conscious guilt.

Some cases may be put which will show very manifestly the injustice of separating an examination, as it is proposed to do in this case.

Suppose a person should be accused before the police office of having assaulted and wounded another; that the prisoner should acknowledge that he had committed the assault and given the wound, but should add that he was stopped on the highway by the wounded man who attempted to rob him—would you convict on the confession and reject the clear part of the examination? So if one should be accused of murder and confess that he had killed the deceased, but that he had struck him as he was attempting to break into the house of the accused at night. I do not believe any court would advise a jury that this would warrant a verdict against the accused.

By a statute of our state it is made a felony for any person to have forged paper in his possession, knowing it to be so, with an intent to pass it. It is always considered that if a large quantity of such paper be found upon a person and he does not satisfactorily show how he came by it, and for what honest purpose he intended it, that it must be presumed not only that he knew it was forged, but that he intended to pass it.

Now, suppose one of our active and vigilant police magistrates should be found with a quantity of such paper upon him, and should be brought before the mayor, for instance, for examination; the magistrate would not deny that he had the paper, nor that he knew it to be forged; but he might add that he had just taken it from a person who was accused before him of the same crime. I cannot but think that my brethren, as well as you, would be of opinion that it would be very unjust to reject the latter part of the examination and to find a verdict of guilty on the confession.

Gentlemen, it is my opinion that in this case you must take

the whole of the examination together. That as the exculpatory facts are not contradicted by any other testimony; as they are not improbable, inconsistent, or absurd, we are bound to believe them as much as the confession. The testimony which tends to convict the prisoner and that which tends to acquit him, come from the same source, the lips of the prisoner; and the latter is entitled to the same credit as the former. I may be wrong in this opinion, but the principles on which it is founded were impressed on my mind when I learned the rudiments of my profession; and if I am wrong I have been in an error through five and twenty years of practice at the bar, a great part of which time I have filled the office of public prosecutor.

I have occupied more of your time than the case would seem to deserve, but it is of importance to the individual; it involves a principle of deep interest in the administration of criminal law; and as I have the misfortune to differ in my opinion with the gentlemen with me on the bench, I have thought it right to give at some length the reasons for the opinion I entertained.

But you will listen, as I shall do, with great respect and attention to the opinions which will be offered by the other judges; and as your minds may be convinced, so will be your verdict.

JUSTICE WARNER. Gentlemen: With every deference to the able argument of his honor the mayor, my opinion is unaltered. The law I have always understood to be well settled, that the possession of stolen property involved the possessor in the presumption of being the thief. In this case we trace the possession to the prisoner, by what again I have always considered to be the best evidence, the confession of the prisoner himself. To take the parts of a prisoner's confession which makes against him and reject the rest, may seem at the first glance, hard; but it is conceded on all hands that such must be the general rule; and when it is considered how easy an artful villain, while he makes a show of ingenuousness by acknowledging what perhaps it would be

worse than in vain for him to deny; that he indeed had stolen property in his possession, may smooth over, or do away his guilt entirely, by stating that he found the property, or bought it, or that it was given to him, as in the present case, I confess I am not disposed to yield to the refinements which the case before us is attempted to be excepted from that general rule.

ALDERMAN UNDERHILL concurred with JUSTICE WARNER.

The *Jury* returned a verdict of *not guilty*.

# THE TRIAL OF THEODORE LYMAN FOR A LIBEL ON DANIEL WEBSTER, BOSTON MASSACHUSETTS, 1828

## THE NARRATIVE.

Theodore Lyman,<sup>1</sup> a leading citizen of Boston, was indicted for a criminal libel upon Daniel Webster,<sup>2</sup> then a Senator from Massachusetts, for charging in his newspaper that Mr. Webster had conspired with other leading New England politicians to break up the Union and re-annex New England to Great Britain.

Webster and Lyman were former political associates and

<sup>1</sup> Mr. Lyman himself was not an unknown man. He was not, as Mr. Curtis calls him, simply "a gentleman of high social standing," but was also one of the most accomplished and eminent citizens of the Commonwealth. Born in 1792, he was graduated from Harvard College in 1810, and then studied in the University of Edinburgh. He had done excellent literary work, publishing "The Political State of Italy," in 1820, and "The Diplomacy of the United States," in 1826. He had been, from 1820 to 1823, on the staff of the Governor of the Commonwealth, with the rank of General, and from 1823 to 1827 he had commanded the "Boston Brigade." He had also been a prominent member of the House in 1820, 1821, 1822, 1823 and 1825, and in 1824 he was a State Senator. He wrote a vigorous style, inherited, perhaps, from his father, who in 1795 wrote to Timothy Pickering of their political opponents in Boston: "They yelp and howl and trumpet treason at every corner." His subsequent life showed the kind of man he was. In 1834 and 1835 he was mayor of Boston, and first promoted the introduction of pure water into the city. While he was mayor he protected Catholics from a brutal protestant mob, and at great personal risk protected abolitionists from a pro-slavery mob in 1835. He became President of the Boston Farm School and of the Prison Discipline Society, and in 1846 he anonymously gave ten thousand dollars to aid in establishing the State Manual Labor School. When he died in 1849, he gave by his will fifty thousand dollars to aid this school, making, with his other gifts to the school, seventy-two thousand five hundred dollars, and also gave ten thousand dollars to the Boston Farm School.

The subsequent conduct of Mr. Lyman towards Mr. Webster shows that he considered the case as really political, and not per-

had been personal friends and neighbors. They were on intimate social terms, met usually several times a week and had for years belonged to a dinner-club that met every Saturday. But Webster and his friends were bitter against Lyman be-

sonal on the part of Mr. Webster. Of course, the trial for the time interrupted the previous intimate social relations between Webster and Lyman, but in a year or two they became reconciled and remained warm personal friends through life. The reconciliation came about in this way. In December, 1829, Mr. Webster married as his second wife, Miss Caroline Leroy, of New York, a former schoolmate of Mrs. Lyman, who was a Miss Henderson, of New York, and Mr. and Mrs. Lyman were informed that if Mrs. Lyman thought proper to call on Mrs. Webster on her arrival in Boston the visit would be received with pleasure and returned. This was done, and after that the families were on intimate social terms.

Mr. Lyman admired Mr. Webster and took his youngest daughter who is now living in Boston, to hear him speak; and when she visited Washington, while Mr. Webster was in the Senate, she also became an admirer of Webster and tells of his personal charm in society, of his impressive appearance, and how she used to go to the Senate only to look at him, and of how the Senate always filled at once when word was passed that "Webster was up." When Mr. Webster's favorite daughter, Julia Appleton, died in 1848, and Mr. Webster was in great grief, Mr. Lyman went to see him and they had a very affecting interview, recalling the old times when they were both young men. Benton, pp. 105, 106.

<sup>2</sup> See 7 Am. St. Tr. 414. Mr. Webster was then forty-six years of age and in the plenitude of his power. He had served four years in Congress as a member of the House from New Hampshire. He was a Presidential Elector and the most prominent member of the Massachusetts Constitutional Convention in 1820, a member of the House in 1822, and had served nearly four years as a member of Congress from Massachusetts. The previous June he had been chosen a Senator in the United States Senate from Massachusetts, but had not taken his seat. He had argued the Dartmouth College case and other equally important cases in the Supreme Court of the United States and had delivered the wonderful orations at the anniversary of the landing of the Pilgrims at Plymouth, the laying of the corner-stone of Bunker Hill monument and the eulogy on Adams and Jefferson. He had also made other speeches and arguments and delivered other orations which firmly established his reputation not only as the most distinguished citizen of Massachusetts but as one of the ablest lawyers and the most eloquent orator of the United States. His reputation had become not only national but international and he had already taken on that lordly manner best known as "Websterian." He had

cause he had left them and was supporting Andrew Jackson for President, whom they regarded as representative of everything that was bad and dangerous in politics.

In 1828 John Quincy Adams was the Federalist, and Andrew Jackson the Democrat (or as it was then called the Republican) candidate for President. Adams, who had been

become a personal political force in the Commonwealth and his control of affairs was such that the prosecuting officers of the State seem to have been mere instruments in his hands in the prosecution of Mr. Lyman.

In all the opposition to the Embargo Acts and to the war with England, Daniel Webster took an active and a leading part. In 1808 he was practicing law in Portsmouth, New Hampshire. He was a Federalist by inheritance, by disposition and by surroundings. He was a faithful disciple of Timothy Pickering, who instigated the Hartford Convention and practically guided its action. As soon as Webster was elected to Congress and before he took his seat in 1813, he wrote Mr. Pickering assuring him of his respect and placing himself under Pickering's political guidance (*Life of Timothy Pickering*, 4-223). He was absolutely opposed to the policy and purposes of Jefferson and of Madison and to the war of 1812. In a speech before the "Federal gentlemen" of Concord, New Hampshire, in 1806, he attacked the administration of Jefferson with great ability and force, and in 1808 he published a pamphlet which first brought him into political prominence, entitled, "Are the Embargo Laws Constitutional?" (*Writings and Speeches of Daniel Webster*, 15-562). This was put in evidence in the Lyman trial. See *post*, p. 377.

In July, 1812, he made a speech in opposition to the war with England and in August of the same year he wrote what was known as the "Rockingham Memorial" address to the President, in opposition to the war. This memorial distinctly spoke of and practically threatened secession from the Union as the result of the conduct of the administration.

His first act upon taking his seat in Congress as a member from New Hampshire was to harass the Government by the introduction of resolutions calling for information as to the repeal of the French decrees and by making a vigorous speech in opposition to the war.

December 9, 1814, Webster said in Congress that Congress had no power to raise armies by calling out the militia against the will of the States; and he added in words which had but one meaning, that of State resistance to the National Government.

"It will be the solemn duty of the State Governments to protect their own authority over their own militia and to interpose between their own citizens and arbitrary power. These are among the objects, for which the State Governments exist. . . . And I shall exhort them to exercise their unquestionable right of pro-

elected to the United States Senate in 1803 as a Federalist, had voted for the Embargo acts of 1807 and 1808, and thereby provoked the bitter hostility of the Massachusetts Federalists. In 1828 Webster and most Federalists in Massachusetts supported Adams for the Presidency as against Jackson, but other Federalists who had not forgiven Adams for

viating for the security of their own liberties." (Letters of Daniel Webster (C. H. Van Tyne), p. 67.)

No word here of the power of the Federal Judiciary to decide this question—only an open and unqualified appeal to the doctrine of States' rights and a practical declaration of the right of the States to nullify the Acts of Congress. No wonder that such words were followed within one month by the declaration of the Hartford Convention that "In case of infractions of the Constitution affecting the sovereignty of a State and the liberty of its people, it is not only the right but the duty of such a State to interpose its authority for their protection in the manner best calculated to secure that end. . . . In such emergencies States which have no common umpire must be their own judges and execute their own decisions."

Webster voted constantly with Pickering who was then in the House and acted at all times with the ultra-Federalists who had, as Mr. Adams charged, undoubtedly proposed in 1804, and again in 1808 and in 1814, to break up the Union and form a separate Confederacy of the New England and other Eastern States. (Life and Letters of George Cabot Lodge.) Even after the British army had entered Washington and burned the White House and the Capitol, Mr. Webster voted against taxes to carry on the war and also spoke and voted against an act to enlist soldiers and raise men by draft to defend the country, taking the ground that the general government under its power "to raise armies" could only obtain troops by contracts of enlistment or by calling on the States to furnish militia.

He also spoke and voted against the establishment of a United States Bank with power to issue notes in such a way as to aid the Government in carrying on the war. In short, he constantly opposed the Government by voice and vote in the war against England—"our second war of independence."

A man is known by the company he keeps; and it is not strange that Mr. Lyman, writing in 1828, should have named Webster with the men with whom he constantly acted.

Mr. Webster, however, with whom love of the Union had become an absorbing passion and who had long ceased to have any sympathy with the ultra-Federalists with whom he had acted and who contemplated disunion, was naturally highly incensed by Mr. Lyman's article in the *Jackson Republican*. Benton, pp. 26-29.



his support of the Embargo acts changed to Jackson and established a newspaper in Boston called the *Jackson Republican* for the purpose of opposing Adams and supporting Jackson. Theodore Lyman was one of the proprietors of this paper which on October 29, 1828, printed the following article:

We publish this morning a letter of December, 1825, of Mr. Jefferson to Mr. Giles and Mr. Adams' own statement published last week in the *National Intelligencer* at Washington concerning disclosures said many months ago to have been made by Mr. Adams to Mr. Jefferson in regard to the conduct of the leaders of the Federal party in New England during the whole course of the commercial restrictive system. Mr. Adams confirms in his statement in a positive and authentic form and shape the very important fact that in the years 1807 and 1808, he did make such disclosures. The reader will observe that Mr. Adams distinctly asserts that Harrison Gray Otis, Samuel Dexter, William Prescott, Daniel Webster, Elijah H. Mills, Israel Thorndike, Josiah Quincy, Benjamin Russell, John Welles and others of the Federal party of their age and standing were engaged in a plot to dissolve the Union and to re-annex New England to Great Britain; and that he (Mr. Adams) possessed unequivocal evidence of that most solemn design. The reader will also observe that in the statement just published of Mr. Adams there is no intimation whatever that he does not still believe what he revealed to Mr. Jefferson and Mr. Giles twenty years ago. All the gentlemen we have mentioned above, are, with one exception, still living, and with two exceptions, are active and ardent political friends of Mr. Adams. We here beg leave to ask why Mr. Adams' statement has been held from the public eye more than a year? Why it has been published only one fortnight before the election for President all over the country? Why for three years he has held to his bosom as political counselor, Daniel Webster, a man whom he called in his midnight denunciation, a traitor, in 1808? Why, in 1826, he paid a public compliment to Josiah Quincy in Faneuil Hall, whom he called a traitor the same year? And as the last question: Why, during the visits he has made to Boston, he always met in friendly and intimate and social terms all the gentlemen whose names a few years before he placed upon a secret record in the archives of our Government as traitors to their country? Why did he eat their salt, break their bread and drink their wine?

The letter of Mr. Jefferson stated that during the time of the Embargo Acts Mr. Adams called on him and said "That he had information of the most unquestionable certainty that certain citizens of the Eastern States (I think he named Massachusetts particularly) were in negotiation with the agents of the British Government, the object of which was an agreement that the New Eng-

land States should take no further part in the war then going on; that without formally declaring their separation from the Union of the States, they should withdraw from the aid and obedience to them; that their navigation and commerce should be free from restraint or interruption by the British, that they should be considered and treated by them as neutrals, and as such might conduct themselves towards both parties; and at the close of the war be at liberty to rejoin this Confederacy."

Neither this letter of Mr. Jefferson nor the statement of Mr. Adams named any persons who had "engaged in a plot to dissolve the Union" and yet the article said that Mr. Adams distinctly asserts that "the nine persons including Mr. Webster were engaged in a plot to dissolve the Union and that he (Mr. Adams) possessed unequivocal evidence of that most solemn design." The article twice specifically named Daniel Webster asking why for three years he (President Adams) has "held to his bosom as a political counselor, a man whom he called in his midnight denunciation, a traitor in 1808," also why President Adams has "always met in intimate and social terms all the gentlemen whose names a few years before he placed upon a secret record in the archives of our government as traitors to their country."

The gist of Mr. Webster's charge against Mr. Lyman was that whereas Mr. Adams had only charged that leading Federalists of Massachusetts had in 1808 been guilty of treasonable designs to break up the Union, naming no one in particular but libelling them all, Mr. Lyman had named Daniel Webster as a person to whom the libel of Mr. Adams applied and thus made Adams' libel of all the leading Federalists of Massachusetts Lyman's own libel of Daniel Webster. The defense of Mr. Lyman was first that the article was not libelous because while Mr. Adams did not name any person specifically, he did charge all the leading Federalists with treasonable designs in 1808 and while he spoke particularly of those of Massachusetts, he really referred to all leading Federalists in New England of whom Daniel Webster was then one. Secondly, Mr. Lyman claimed that the article was not directed against Mr. Webster, but only against Mr. Adams;

that he wrote the article hastily, forgetting that in 1808 Mr. Webster did not live in Massachusetts, but in New Hampshire, and with no real intention of charging Mr. Webster with any treasonable plot and that if he had done so in effect it was a mere inadvertance and a mistake.\*

\* The trial excited not only local, but national interest at the time, and yet the name of the person prosecuted and the real facts of the trial have been so far suppressed in general history that but few of even the best informed persons are now acquainted with them. Edward Everett and Henry Cabot Lodge do not mention the trial in their biographies of Webster. Neither Lanman, Harvey nor any other biographer of Webster, except Curtis, says anything of it, and it is not mentioned in any published or unpublished Webster papers or correspondence so far as I can ascertain. It is mentioned in the famous diary of John Quincy Adams where he wrote: "January 16, 1829, Mr. Clay said he had mentioned to Mr. Webster Lyman's libel, and my publication of 21st October and that Mr. Webster professed to have no unfriendly feeling to me, but that he seemed to regret his having prosecuted Lyman."

And again on March 21, 1829, after Mr. Adams had ceased to be President, he wrote in his diary: "Mr. Webster called also to take his leave. I told him that in the *National Intelligencer* of 21st October last, I had not the most distant reference to him, and he said that he had no feeling of dissatisfaction from it regarding me." But Mr. Adams says Webster spoke with great bitterness of Harrison Gray Otis, and other Federalists and regretted the publication of Mr. Adams, because he thought it would tend to cause the Hartford Conventionists and the Jackson people to unite. Even Mr. Curtis, in his extended biography of Webster, while he speaks of the case, carefully suppresses the name of the person indicted, referring to him only as a "gentleman of high social standing." He says: "In the autumn of 1828, Mr. Webster prosecuted a gentleman of high social standing in Boston by indictment for a libel." He then gives two pages to a statement of the case from the Webster side and concludes by saying that, while the jury did not agree, ten were for conviction, and adds in a note that "a clearer case of libel could not well exist." Mr. Curtis even suppresses Mr. Lyman's name in printing a letter from Henry Clay to Webster, of November 30, 1828, in which Clay says: "You have all my wishes for success in the prosecution against Lyman." Curtis quotes it "in the prosecution against—." This suppression of Mr. Lyman's name, while perhaps intended to avoid injury to the feelings of his family and friends, recently provoked inquiry from a prominent gentleman in a Southern State as to the name of the "gentleman of high social standing" prosecuted by Webster. This inquiry led me to investigate the

The trial began on the morning of December 16, 1828. Mr. Webster was present with his friends and the court room was crowded with leading politicians of Massachusetts and prominent citizens of Boston. The Solicitor-General for the prosecution read the libel and proved its publication and that the defendant was its author. The defense proved that Mr. Webster had written a vigorous pamphlet denouncing the embargo laws and that he was also the author of the Rockingham Memorial. Lengthy speeches to the jury were made by the lawyers on both sides and the judge charged the jury. After a long conference they returned into court, and were asked if they had agreed, to which the foreman replied that they had not. The Chief-Justice asked them if there was any question "concerning the nature of the law," or whether their disagreement was wholly upon the facts. The foreman answered: "It is entirely upon the facts, we do not disagree upon the law." The Chief Justice then asked: "Is there any prospect of an agreement?" to which the foreman replied: "In my opinion there is none." The jury were then discharged.

#### THE TRIAL.<sup>4</sup>

*In the Supreme Judicial Court, Boston, Massachusetts, December, 1828.*<sup>5</sup>

HON. ISAAC PARKER,<sup>6</sup> Judge.

trial, its causes and circumstances and also to examine other matters connected with it.

An examination of the court records shows that the person prosecuted was Theodore Lyman, Jr. A pamphlet, now rare, by John W. Whitman, reporting the trial, and the *Boston Daily Advertiser* of December 22, 1828, give what are apparently fairly accurate accounts. Benton, pp. 2-5.

<sup>4</sup>*Bibliography.* "Report of a Trial in the Supreme Judicial Court, Holden at Boston, December 16th and 17th, 1828, of Theodore Lyman, Jr., for an Alleged Libel on Daniel Webster, a Senator of the United States, published in the *Jackson Republican*. Comprising all the Documents and Testimony given in the Cause, and full notes of the Arguments of Counsel, and the Charge of the Court. Taken in shorthand. By John W. Whitman. Boston. Published by Putnam & Hunt, 41 Washington Street. 1828."

<sup>5</sup>"A Notable Libel Case. The Criminal Prosecution of Theo-

November 17.

The grand jury had previously returned an indictment against Theodore Lyman for a libel upon Hon. Daniel Webster, published in a newspaper called the *Jackson Republican*, and charging him with having in 1807 and 1808 conspired with other leading New England public men to break up the Union and re-annex New England to Great Britain.

The indictment was in the following words:

The jurors for said Commonwealth of Massachusetts upon their oath present, that Theodore Lyman, Jr., of Boston, in the said county of Suffolk, Esquire, being a person of malicious temper and disposition, and regardless of the integrity, patriotism, and purity of character, which the citizens of this Commonwealth, and of the United States, when elected to, and intrusted with offices of honor, trust and responsibility, in the administration of the governments of this Commonwealth, and of the United States, ought to possess and sustain; and unlawfully, maliciously and deliberately, devising, contriving and intending to traduce, vilify and bring into contempt and detestation, one Daniel Webster, of said Boston, Esquire, who was on the day hereafter mentioned, and still is one of the Senators in the Congress of the United States of America, for the State of Massachusetts, duly, and constitutionally, elected and appointed to the office, and also, maliciously intending to insinuate, and cause it to be believed, that the said Daniel Webster, and divers other good and patriotic citizens, of this Commonwealth, has been engaged in an atrocious, and treasonable plot

dore Lyman by Daniel Webster in the Supreme Judicial Court of Massachusetts, November Term, 1828. Joshua H. Benton, Jr., Boston. Charles E. Goodspeed, 1904." A limited edition of 400 copies of the volume was printed by D. B. Updike, the Merrymount Press, Boston, in June, 1904. The book is a review of the case with a history of the persons connected with the trial and contains a strong criticism of Mr. Webster's action in forcing the indictment. There are fine steel plates of Webster and Lyman as well as of Chief Justice Parker, Daniel Davis and Samuel Hubbard.

The trial was reported in the *Boston Daily Advertiser*, December 18, the *New England Palladium* and *American Traveller*, December 19, the *Jackson Republican* and the *Independent Chronicle* and *Boston Patriot*, December 20, but none of the Boston papers made any editorial comment on the case.

<sup>5</sup> The trial was in what was then the "New Court House," in School street, sometimes called "Johnson Hall" on the site of the present City Hall. Benton, p. 62.

<sup>6</sup> See 11 Am. St. Tr. 873.

to dissolve the Union of the said United States, then, and still constituting the government of the said United States, under the present constitution thereof; and further, maliciously intending to insinuate, and cause it to be believed, that John Quincy Adams, the present President of the United States, had denounced the said Daniel Webster, as a traitor to his country; on the twenty-ninth day of October, now last past, at Boston aforesaid, in the county of Suffolk aforesaid, unlawfully, maliciously and deliberately, did compose, print and publish, and did cause and procure, to be composed, printed and published, in a certain newspaper called the *Jackson Republican*, of and concerning him, the said Daniel Webster, an unlawful, malicious, and infamous libel, according to the purport and effect, and in substance, as follows, that is to say, "We (meaning the said Theodore Lyman, Junior), publish this morning a letter of December, 1825, of Mr. Jefferson, to Mr. Giles and Mr. Adams' (meaning John Quincy Adams, the present President of the United States), own statement, published last week in the *National Intelligencer* at Washington, concerning disclosures said many months ago, to have been made by Mr. Adams (meaning the said John Quincy Adams), to Mr. Jefferson (meaning Thomas Jefferson, late of the State of Virginia), in regard to the conduct of the leader of the Federal party, in New England, during the whole course of the commercial restrictive system. Mr. Adams (meaning the said John Quincy Adams) confirms in his statement, in a positive and authentic form and shape, the very important fact, that, in the years 1807 and 1808 he (meaning the said John Quincy Adams), did make such disclosures. The reader will observe, that Mr. Adams, (meaning the said John Quincy Adams,) distinctly asserts, that Harrison Gray Otis, Samuel Dexter, William Prescott, Daniel Webster, (meaning the aforesaid Daniel Webster,) Elijah H. Mills, Israel Thorndike, Josiah Quincy, Benjamin Russell, John Wells, and others of the Federal party, of their age, and standing, were engaged in a plot to dissolve the Union, (meaning the government of the said United States,) and to re-annex New England to Great Britain; and that he (Mr. Adams,) (meaning the aforesaid John Quincy Adams) possessed unequivocal evidence, of that most solemn design. The reader will, also, observe, that in the statement just published, of Mr. Adams, (meaning the said John Quincy Adams,) there is no intimation whatever, that he, (meaning the said John Quincy Adams,) does not still believe, what he, (meaning the said John Quincy Adams,) revealed to Mr. Jefferson, (meaning the aforesaid Thomas Jefferson,) and Mr. Giles, twenty years ago. All the gentlemen we (meaning the said Theodore Lyman, Junior,) have mentioned above, are, with one exception, still living and, with two exceptions, are active and ardent political friends of Mr. Adams, (meaning the said John Quincy Adams). We (meaning the said Theodore Lyman, Junior,) here beg to ask, why Mr. Adams' (meaning the said John Quincy Adams,) statement, has been withheld from the

public eye more than a year? Why it has been published only one fortnight before the election for President all over the country? Why for three years he (meaning the said John Quincy Adams,) has held to his (meaning the said John Quincy Adams) bosom, as a political counsellor, Daniel Webster, (meaning the aforesaid Daniel Webster,) a man whom he (meaning the said John Quincy Adams,) called in his (meaning the said John Quincy Adams,) midnight denunciation, a traitor in 1808? (meaning the said John Quincy Adams, had called and denounced the said Daniel Webster, as a traitor to the government of the United States, in the year 1808?) Why in 1826, he (meaning the said John Quincy Adams,) paid a public compliment to Josiah Quincy, in Faneuil Hall, when he (meaning the said John Quincy Adams,) who he called a traitor, (meaning traitor) the same year? And as the last question, why, during the visits he (meaning the said John Quincy Adams,) has made to Boston, he (meaning the said John Quincy Adams,) always met in friendly and intimate and social terms all the gentlemen, (meaning gentlemen, and the said Daniel Webster as one of them,) whose names a few years before, he (meaning the said John Quincy Adams,) placed upon a secret record in the archives of our government as traitors to their country? (meaning that the said John Quincy Adams has placed the name of the said Daniel Webster, with others, upon a secret record in the archives of the government of the United States, as a traitor to his country,) why did he (meaning the said John Quincy Adams,) eat their salt, break their bread, and drink their wine?"

To the great injury, scandal and disgrace of the said Daniel Webster, and against the peace and dignity of the Commonwealth aforesaid.

There was a second count to the same effect.

*The Clerk.* Theodore Lyman, hearken to an indictment found against you by the grand inquest for the body of this county.

The indictment was then read.

*The Clerk.* What say you, are you guilty or not guilty?

*Mr. Lyman.* Not guilty.

*Daniel Davis,*<sup>7</sup> Solicitor General; *James T. Austin,*<sup>8</sup> and *Richard Fletcher,*<sup>9</sup> for the Commonwealth.

<sup>7</sup> DAVIS, DANIEL. See 11 Am. St. Tr. 874.

<sup>8</sup> AUSTIN, JAMES TRECOTHIC. (1784-1870.) Born Boston; graduated Harvard, 1802; Town Advocate, Boston, 1809; member Constitutional Convention, 1820; State Senator, 1825, 1826, 1832; Attorney General 1832-1843.

<sup>9</sup> FLETCHER, RICHARD. (1788-1869.) Born Cavendish, Vt.; graduated Dartmouth, 1806; studied law with Daniel Webster;

*Franklin Dexter*,<sup>10</sup> and *Samuel Hubbard*,<sup>11</sup> for the Defendant.

*Mr. Dexter* moved for a continuance to the March Term, 1829, and filed the following affidavit:

The said Theodore Lyman, Jr., makes oath and says that this indictment was found against him at the present term of this court, and that he has had only five days' notice thereof, and was not able to procure a copy thereof until three days ago. That immediately on obtaining such copy, he advised with his counsel respecting the answer he should make to the same. That his said counsel have had the same under consideration, and now advise him that the several matters therein charged to have been published by said Lyman are not libellous, if the same were neither wilfully false, nor maliciously contrived and intended to defame the said Daniel Webster, both of which the said Lyman wholly denies. The said Lyman is further advised that he may lawfully give in evidence on the trial of said indictment the truth of the several matters contained and alleged in said supposed libel, as a justification thereof, and that he cannot safely proceed to trial on the point of his defense without evidence of a great variety of facts relating to the political history of the United States for more than twenty years last past, and to the part taken therein by the said Daniel Webster and the other persons named in the said supposed libel. That it will be necessary for him to prove, among other things, that John Quincy Adams, the President of the United States, composed and published, or caused to be composed and published in the newspaper called the *National Intelligencer*, the statement said in that paper to be authorized by him and referred to in said supposed libel, and that the said Thomas Jefferson did write to said William B. Giles the letter referred to in said supposed libel; and that the said Daniel Webster was one of the description of persons referred to by said Adams as engaged in a course of opposition to the general government, which in the opinion of said Adams, tended to produce a forcible resistance

member U. S. House of Representatives, 1837-1839; Associate Justice Supreme Court (Mass.), 1848-1853; died in Boston.

<sup>10</sup> DEXTER, FRANKLIN. (1793-1857.) Born Charlestown, Mass.; son of Samuel Dexter; graduated Harvard, 1812; studied law with Samuel Hubbard and married a daughter of William Prescott; member (Mass.) House, 1824, 1825, 1828, 1840; State Senator, 1835; U. S. District Attorney, 1841-1845, 1849; died at Beverly, Mass.

<sup>11</sup> HUBBARD, SAMUEL. (1785-1847.) Born and died in Boston; graduated Yale, 1802; member Massachusetts House, 1816, 1820, 1831; of Constitutional Convention, 1820, and of State Senate, 1823, 1838; Associate Justice Supreme Court, 1842-1847.



and civil war, in which the persons so spoken of by him would surely call in the aid of Great Britain against the Government of the United States; and also as persons whose object was to dissolve the Union of the United States, and establish a separate confederacy, by the aid of Great Britain if necessary.

Whereupon the said Lyman further says, that to prove the truth of the matters aforesaid, numerous facts will be important which took place before he was himself of an age to have personal knowledge of political affairs of the country or of the individuals who had the management of the same, and which it will require much time to investigate; that the said matters involve inquiries of an ancient date to be made of various aged persons, in distant parts of the United States, whose attendance it will not be possible for said Lyman to procure at the present term. But the facts of which said Lyman is already informed and which he is advised are material to this part of his defense, are as follows, viz.:

The said Lyman believes and expects to prove that the said John Quincy Adams did in fact write and publish or cause to be written and published, in the said *National Intelligencer*, the said statement referred to in said supposed libel, and this, said Lyman expects to prove either by Gales and Seaton, the editors of said *National Intelligencer*, or one of them, or by said John Quincy Adams, all which persons are now without the Commonwealth, and cannot be procured to attend the trial at this time, but the said Lyman further says that he has a reasonable expectation that the said John Quincy Adams will return within this Commonwealth in season to attend the trial at the next term of this Court.

And the said Lyman further believes and expects to prove that the persons referred to by said Adams as aforesaid, were the eminent men of a certain political party in New England, then known as the Federal party; and that the said Daniel Webster was in and about the year 1808, and for many years after, an eminent and conspicuous member of said Federal party; and being a person of distinguished talents and influence, and enjoying the general confidence of said Federal party, did participate in and by his talents and influence greatly urge and promote the measures of opposition to the embargo and the restriction system then pursued by the General Government and decreed so injurious and oppressive by this section of the Union; which facts said Lyman expects to prove by divers persons resident in the State of New Hampshire, but of whose names and residence said Lyman is not yet informed, but said Lyman's reason for believing that he can prove the same is, that the same things are commonly reported and believed, but the said Lyman is not yet informed (nor can he during the present term procure such information together with the other evidence necessary to his defense) who were the persons, who know said facts of their own knowledge.

And the said Lyman further expects to prove and verily be-

lieves that said John Quincy Adams did in or about the year 1808, write to divers persons then in high office in the Government of the United States, and among these to the said William B. Giles, then a member of Congress from the State of Virginia sundry secret and confidential communications, denouncing the said Federal party or the leaders thereof, as engaged in treasonable projects of resistance to the General Government, and for dissolving the Union. The said Lyman's reasons for believing and expecting to be able to prove that said Adams did so write or communicate, are deduced from said Adams' said statement, and said Lyman expects to prove the same at the next term by the said Adams' own testimony, or that of said William B. Giles, who is an aged and infirm man, and cannot attend the trial at this term; and by other persons to whom the said Adams wrote or communicated as aforesaid, but who are not resident in this Commonwealth and at present are unknown to said Lyman.

And the said Lyman further says that he expects and believes that he shall be able to obtain all the evidence aforesaid in season for a trial at the next term of this court.

*Mr. Davis* filed the following objections to the above affidavit:

The defendant does not state in the affidavit that the publication originated in mistake or misapprehension; nor does he in any manner disavow an intention of publishing anything derogatory to the character of Mr. Webster.

Nor does he in a direct and unequivocal manner state that he can, or expects to, prove the truth of the matter alleged to be libellous or any part of it. He does not swear in any part of the affidavit that he himself believes that what he published is true. The matter charged as libellous is that Mr. Adams distinctly asserts that Mr. Webster (with others) were engaged in a plot to dissolve the Union and re-annex New England to Great Britain; and that Mr. Adams possessed unequivocal evidence of that most solemn design. But the defendant does not swear that he expects to be able to prove that Mr. Adams ever in fact made such an assertion; nor does he declare that such an assertion if made, was true.

The publication alleges that Mr. Adams has placed the name of Mr. Webster (with others) upon a secret record in the archives of our Government as traitors to their country! But the defendant does not state that he expects to prove it.

The defendant swears that he is advised that he may give in evidence the truth of the several matters contained in the alleged libel, but he does not swear that he expects to be able to prove the truth of them or any part of them.

The affidavit states the necessity of making researches into the history of the country and of consulting aged persons, etc., but the defendant does not swear that he expects that such researches and inquiries will furnish any evidence that Mr. Adams made any such

assertion as to Mr. Webster, as the libel states, or that Mr. Adams did in fact place the name of Mr. Webster on the records and among the archives of our Government as a traitor to his country as the libel alleges. After the several introductory matters contained in the affidavit, the defendant proceeds to state that to prove the matters aforesaid numerous facts will be important which took place before the defendant was of an age to have personal knowledge of political affairs; but those matters aforesaid do not relate to the matters stated in the libel; but other general and wholly irrelevant matters.

As to all these statements in the affidavit the defendant neither swears that he believes the charges in the libel are true, nor that he expects to be able to prove them; nor that he expects to prove that Mr. Adams made the assertions imputed to him.

The defendant then swears that he expects to prove the following facts:

1. That Mr. Adams did write and publish the article in the *National Intelligencer* referred to in the supposed libel. The fact will be admitted on the trial.

2. That the persons referred to by Mr. Adams were eminent men in a certain political party in New England—but he does not state the absence of any witness necessary to prove this—and if he should the fact will be admitted.

3. That Mr. Webster was in and about the year 1808, a member of the Federal party, and did use and promote the measures of opposition to the embargo and restrictive system, but this, if proved, has no relation whatever to the libellous matter before stated. But it will be admitted on the trial that in 1808, Mr. Webster in the political divisions of those times was a Federalist; that so far as the open expression of opinions against the embargo and non-intercourse constituted opposition to those measures, he did oppose them. And if the defendant means that he opposed them by any other means or measures of opposition, they ought to have been stated in the affidavit.

4. The affidavit states that the defendant expects to prove that Mr. Adams in the year 1808 wrote letters to persons high in office or made other confidential communications, denouncing the Federal party or leaders thereof, as engaged in treasonable projects. But defendant does not swear that he expects to prove that said communications, if made, included the name of, or had any reference to Mr. Webster. The ground of belief in this respect is alleged to be the publication of Mr. Adams before referred to; but that publication affords no ground or pretense for such belief, because it refers wholly to persons in Massachusetts—nor is it alleged in the affidavit that the defendant expects to prove that Mr. Webster in 1807 and 1808 was one of the leaders of the Federal party in Massachusetts.

Lastly, if the defendant will swear that he himself believes that the matters contained in his publication and charged in the in-

dictment as libellous are true; or that he expects to be able to prove them to be true, the Solicitor-General will agree to a continuance without the defendant's being obliged at this time to state particularly by what evidence he expects to prove them.

And, therefore, the *Solicitor-General* moves the Court that the following interrogatories may be put to the defendant and that the said interrogatories and defendant's answers may be made a part of his affidavit.

1. Do you expect to be able to prove that Daniel Webster in the years entered into a plot to dissolve the Union and re-annex New England to Great Britain?

2. Do you expect to prove that John Quincy Adams ever asserted that Daniel Webster entered into a plot as stated in the preceding interrogatory?

3. Do you expect to prove that Mr. Adams ever denounced Mr. Webster as a traitor in 1807 and 1808 or that he ever placed his name as a traitor to his country, upon any record among the archives of the Government of the United States?

4. Do you expect to prove that the matter charged as libellous in your publication so far as respects Mr. Webster is true?

The *Solicitor General* also filed the following statement of what he would admit upon the trial:

The Solicitor General will admit at the trial of the above cause the following facts:

1. That Mr. John Quincy Adams did publish the statement ascribed to him and printed in the *National Intelligencer*.

2. That the printed letter of Mr. Jefferson to Mr. Giles was written by and to said persons, dated 25 Dec. 1825.

3. That Mr. Webster in 1808 was an eminent and conspicuous member of the Federal party, etc., in the terms of the affidavit.

4. That Mr. Adams wrote such letters to Mr. Giles and others as he, Mr. Adams, says in his said statement he wrote to Mr. Giles and others.

But it is not admitted that Mr. Webster was comprehended or included in the terms of Mr. Adams' statement.

*Mr. Lyman* declined to answer the interrogations of the *Solicitor General*, and the Court thereupon denied the motion for a continuance, and the case was by consent of counsel assigned for December 16.

December 16.

*The Clerk.* Theodore Lyman, you are now to be tried, and these good men whom I shall call on to pass between the Commonwealth and you upon your trial. If you object to any of them, you must do it as they are called and before they are sworn.

The names of the following jurors were drawn by the clerk, and they answered to their names. No objection was made by the

defense to any of them. William B. Sweet (foreman), merchant. Francis Hall, distiller. Thomas Hunting, merchant. Charles Lane, merchant. Wyman Harrington, mason. Benjamin Brown, painter. John G. Valentine, upholsterer. Nathaniel H. Whitaker, auctioneer. Jno. B. Brown, merchant. Charles R. Ellis, merchant. Frederick Gould, clothier. Albert Smith, saddler.

*The Clerk.* Hold up your right hand. You do each of you solemnly swear that you shall well and truly try the issue between the Commonwealth and the defendant according to the evidence, so help you God. They each took the oath.

*The Clerk.* Gentlemen of the jury. Hearken to an indictment against the defendant by the grand inquest for the body of this county. The indictment was then read.

### MR. DAVIS' OPENING SPEECH.

*The Solicitor-General.* This indictment charges the defendant with a false, scandalous and malicious libel upon Daniel Webster, with an intent to defame said Webster, which libel is couched in the common, legal and technical language. It is stated in two counts, which intend no more or less than charging the same offense in a different manner. The character and standing of the parties, as well as the nature of the allegations against the reputation of Mr. Webster, as charged by General Lyman, give to this trial a peculiar interest. The high character of the defendant in this prosecution is well known to the jury; he has been before the public in offices of honor and trust, and is deservedly esteemed not only by his more intimate acquaintances, but by the whole public. On the other hand the high political standing of Mr. Webster is a fact equally known to the jury and the world. In this case particularly, as well as in all others, the jury are called to act with great deliberation, fairness and impartiality. I shall take the liberty to observe, previous to stating more particularly the exact nature of this case, that had this attack been one of an ordinary kind, such as is usual in the common newspapers of the day, no public prosecution would have been instituted. But the fact is otherwise—the accusation against Mr. Webster is of a high and aggravated nature—it was not confined to the immediate neighborhood of Mr. Webster—but through the columns of

the *Jackson Republican*, had a circulation coextensive with his name, which gave a title to the paper itself—it was against a Senator of the United States, and in this accusation was implicated, indirectly, the character of the nation. It operated throughout the whole of the United States against the distinguished reputation of Mr. Webster, whose character was known as extensively as the confines of the Union, and had extended even beyond it, to Europe—to the world. He was the representative of the interests and dignity of this sovereign state. His character, individually and politically speaking, was the property of the public—of the nation. Under any circumstances the character of an individual was at all times the property of the public, and as such to be protected by the public, more especially was that of a public officer discharging duties of a high and responsible nature. The gentleman libelled was a member of the Senate of the United States—a representative of the sovereignty of this state at our national councils—in his character, therefore, was this commonwealth peculiarly interested. Mr. Webster in his situation as a Senator of the United States, by his duty, was bound to repair to the seat of government as soon as possible. He would there meet both his friends and his enemies, they holding this paper, this accusation in their hands. They there would have no means of judging of his guilt or innocence. He was accused of one of the highest of crimes—there was no degree of depravity, of a deeper nature, than that which existed in the bosom of a traitor. Under such circumstances, if there ever was a time when a public prosecution should be instituted, to protect the reputation of an individual, it was on an occasion like this. It was not the prosecution of Mr. Webster, but of the whole commonwealth—his character, standing, reputation, and more than all, his situation as the representative of a state sovereignty in the national councils, demanded a public prosecution and investigation into the nature and authority for so high a charge, before he should take his seat at the Senate board of the United States. He had children and friends interested

in wiping away the stain created on the escutcheon of his reputation, by so foul a charge. The public good required an examination into it, and the reputation of our state at our seat of government imperiously demanded a thorough investigation of its truth or falsehood. The freedom of the press, one of the greatest blessings of a free nation, had been abused full often of late, and imperilously required of the laws to be controlled and repressed in such abuses, especially when consequences and evils like those in this case pressed upon the public peace and quiet. The situation of the press and the latitude taken by those who have the charge of it, was different from what it had been in former times—the number of newspapers in circulation had increased the evil—and though they contributed, when confined to their legitimate purposes, to the diffusion of knowledge, science, and a spread of political information, greatly to the common good of a free people, yet when they were made the medium of communication for the foulest of calumnies, when her thousand tongues are employed in the circulation of the blackest slanders, then it becomes the duty of government to interfere. It was not the freedom of the press which was to be controlled, but the abuse of that freedom. It was admitted on all hands, that some papers were set up, not for the purpose of a diffusion of general knowledge and science, or mere circulation of political information, but for express and personal political objects. When such was the case, and when purity of character was invaded, and the rights of individuals wantonly outraged, it was the duty of the guardians of the public peace, to repress such abuse of the freedom of the press. Should this not be done by those whose duty it was to watch over the public interests, the consequences would be the breaking up of the foundations of civil society, violent and deadly contests, and one wide scene of confusion, disorganization and blood would ensue. The feelings of Americans were such that they never would submit to outrage and wrong with impunity, and the proper, and in fact only place of redress was here, at the laws, and before a jury of the country. The offense of libeling an individual in all ages and in every civilized country

had been punished with marked severity. In Greece and Rome it was an offense of high magnitude. The libel alluded to in the present case had appeared in the *Jackson Republican*, and was couched in substance, in the following language:

We publish this morning a letter <sup>12</sup> of December, 1825, of Mr. Jefferson to Mr. Giles,<sup>13</sup> and Mr. Adams' own statement, published last week in the *National Intelligencer* at Washington,<sup>14</sup>

<sup>12</sup>Mr. Giles.

Montreal, Dec. 25, 1815.

Dear Sir: Your favor of the 15th was received four days ago. It found me engaged in what I could not lay aside until this day. Far advanced in my eighty-third year, worn down with infirmities which have confined me almost entirely to the house for seven or eight months past, it afflicts me much to receive appeals to my memory for transactions so far back as that which is the subject of your letter. My memory is indeed become almost a blank, of which no better proof can probably be given you than by my solemn protestation that I have not the least recollection of your intervention between Mr. John Q. Adams and myself, in what passed on the subject of the embargo. Not the slightest trace of it remains in my mind. Yet I have no doubt of the exactitude of the statement in your letter. And the less as I recollect the interview with Mr. Adams, to which the previous communications which had passed between him and yourself, were probably and naturally the preliminary. That interview I remember well; not indeed, in the very words which passed between us, but in their substance, which was of a character too awful, too deeply engraved in my mind, and influencing too materially the course I had to pursue, ever to be forgotten. Mr. Adams called on me pending the embargo, and while endeavors were making to obtain its repeal. He made some apologies for the call, on the ground of our not being then in the habit of confidential communications, but that which he had then to make involved too seriously the interest of our country not to overrule all other considerations with him, and make it his duty to reveal it to myself particularly. I assured him there was no occasion for an apology for his visit, that on the contrary his communication would be thankfully received and would add a confirmation the more to my entire confidence in the rectitude and patriotism of his conduct and principles. He spoke then of the dissatisfaction of the Eastern portion of our confederacy with the restraints of the embargo then existing, and their restlessness under it. That there was nothing which might not be attempted to rid themselves of it. That he had information of the most unquestionable certainty that certain citizens of the Eastern States (I think he named Massachusetts particularly), were in negotiation with the agents of the British Government, the object of which was an agreement that the New England States should take no further part in the war then



concerning disclosures said, many months ago, to have been made by Mr. Adams to Mr. Jefferson, in regard to the conduct of the leaders of the Federal party in New England, during the whole

going on; that, without formally declaring their separation from the Union of the States, they should withdraw from all aid and obedience to them; that their navigation and commerce should be free from restraint or interruption by the British; that they should be considered and treated by them as neutrals, and as such might conduct themselves towards both parties; and at the close of the war be at liberty to rejoin this confederacy.

He assured me that there was imminent danger that the Convention would take place, that the temptations were such as might debauch many from their fidelity to the Union, and that to enable its friends to make head against it, the repeal of the embargo was absolutely necessary. I expressed a just sense of the merit of the information, and of the importance of the disclosure to the safety and even salvation of our country; and however reluctant I was to abandon the measure (a measure which persevered in a little longer, we had subsequent and satisfactory assurance would have effected its object completely), from that moment, and influenced by that information, I saw the necessity of abandoning it, and instead of effecting our purpose by this peaceful weapon, we must fight it out, or break the Union. I then recommended to my friends to yield to the necessity of a repeal of the embargo, and to endeavor to supply its place by the substitute in which they could procure a general concurrence.

I cannot too often repeat that this statement is not pretended to be in the very words which passed—that it only gives faithfully the impression remaining on my mind. The very words of a conversation are too transient and fugitive to be so long retained in remembrance. But the substance was too important to be forgotten; not only from the revolution of measures it obliged me to adopt, but also from the renewals of it in my memory on the frequent occasions I have had of doing justice to Mr. Adams, by repeating this proof of his fidelity to his country, and of his superiority over all ordinary considerations when the safety of that was brought into question.

With this best exertion of a waning memory which I can command, accept assurances of my constant friendship and respect.

Thomas Jefferson.

<sup>13</sup> GILES, WILLIAM BRANCH. (1762-1830.) Born Amelia Co., Va.; educated at Hampden, Sidney and Princeton; studied law and practiced first at Petersburg; member U. S. House of Representatives, 1790-1803; and of Virginia Legislature, 1791-1801; United States Senator, 1804-1815; Governor of Virginia, 1827.

<sup>14</sup> The following is Mr. Adams' statement published in the *National Intelligencer*:

The publication of a letter from Mr. Jefferson to Mr. Giles, dated

course of the commercial restrictive system. Mr. Adams confirms in his statement, in a positive and authentic form and shape, the very important fact, that in the years 1807 and 1808, he did make

the 25th of December, 1825, concerning a communication made by Mr. Adams to Mr. Jefferson, in relation to the embargo of 1807, renders necessary the following statement, which we are authorized by Mr. Adams to make.

The indistinctness of the recollections of Mr. Jefferson, of which his letter itself feelingly complains, has blended together three distinct periods of time, and the information, which he did receive from Mr. Adams, with events which afterwards occurred, and of which Mr. Adams could not have informed him. It fortunately happens that this error is apparent on the face of the letter itself. It says, "Mr. Adams called on me pending the embargo, and while endeavors were making to obtain its repeal." He afterwards says, that, at this interview, Mr. Adams, among other things, told him that "he had information of the most unquestionable certainty, that certain citizens of the Eastern States (I think he named Massachusetts particularly), were in negotiation with agents of the British Government, the object of which was an agreement, that the New England States should take no further part in the war then going on," etc.

The embargo was enacted on the 22d of December, 1807, and repealed by the non-intercourse act on the 1st of March, 1809. The war was declared in June, 1812.

In August, 1809, Mr. Adams embarked for Russia, nearly three years before the Declaration of War, and did not return to the United States till August, 1817, nearly three years after the conclusion of the peace.

Mr. Madison was inaugurated President of the United States on the 4th of March, 1809.

It was impossible, therefore, that Mr. Adams could have given any information to Mr. Jefferson, of negotiations by citizens of Massachusetts with British agents, during the war, or having relation to it. Mr. Adams never had knowledge of any such negotiations.

The interview, to which Mr. Jefferson alludes, took place on the 15th of March, 1808, pending the embargo; but, at the session of Congress before the substitution for it of the non-intercourse act. The information given by Mr. Adams to Mr. Jefferson, had only an indirect reference even to the embargo, and none to any endeavors for obtaining its repeal. It was the substance of a letter from the Governor of Nova Scotia to a person in the State of Massachusetts, written in the summer of 1807, and before the existence of the embargo; which letter Mr. Adams had seen. It had been shown to him without any injunctions to secrecy, and he betrayed no confidence in communicating its purport to Mr. Jefferson. Its object was to countenance and accredit a calumny then extensively

such disclosures. The reader will observe, that Mr. Adams distinctly asserts, that Harrison Gray Otis,<sup>15</sup> Samuel Dexter,<sup>16</sup> William

prevailing among the enemies of Mr. J. and the opponents of his administration, that he and his measures were subservient to France; and it alleged that the British Government were informed of a plan, determined upon by France to effect the conquest of the British Provinces on this continent, and a revolution in the Government of the United States, as means to which, they were first to produce war between the United States and England. From the fact that the Governor of Nova Scotia had written such a letter to an individual in Massachusetts, connected with other facts, and with the movements of the party then predominant in that State, Mr. Adams and Mr. Jefferson drew their inferences, which subsequent events doubtless confirmed; but which inferences neither Mr. Jefferson nor Mr. Adams then communicated to each other. This was the only confidential interview which, during the administration of Mr. Jefferson, took place between him and Mr. Adams. It took place first at the request of Mr. Wilson Carey Nichols, then a member of the House of Representatives of the United States, a confidential friend of Mr. Jefferson; next, of Mr. Robinson, then a Senator from Vermont; and lastly, of Mr. Giles, then a Senator from Virginia—which request is the only intervention of Mr. Giles, ever known to Mr. Adams, between him and Mr. Jefferson. It is therefore not surprising, that no such intervention occurred to the recollection of Mr. Jefferson, in December, 1825.

This interview was in March, 1808. In May of the same year, Mr. Adams resigned his seat in the Senate of the United States.

At the next session of Congress, which commenced in November, 1808, Mr. Adams was a private citizen, residing at Boston. The embargo was still in force, operating with extreme pressure upon the interests of the people, and was wielded as a most effective instrument, by the party prevailing in the State, against the administration of Mr. Jefferson. The people were constantly instigated to forcible resistance against it; and juries after juries acquitted the violators of it, upon the ground that it was unconstitutional, assumed in the face of a solemn decision of the District Court of the United States. A separation of the Union was openly stimulated in the public prints, and a Convention of Delegates of the New England States, to meet at New Haven, was intended and proposed.

Mr. Giles and several other members of Congress, during this session, wrote to Mr. Adams confidential letters, informing him of the various measures proposed as reinforcements or substitutes for the embargo, and soliciting his opinions upon the subject. He answered those letters with frankness, and in confidence. He earnestly recommended the substitution of the non-intercourse for the embargo; and, in giving his reasons for this preference, was necessarily led to enlarge upon the views and purposes of certain

Prescott,<sup>17</sup> Daniel Webster, Elijah H. Mills, Israel Thorndike,<sup>18</sup> Josiah Quincy,<sup>19</sup> Benjamin Russell,<sup>20</sup> John Wells,<sup>21</sup> and others of the Federal party of their age and standing were engaged in a plot

leaders of the party, which had the management of the State Legislature in their hands. He urged that a continuance of the embargo much longer would certainly be met by forcible resistance, supported by the Legislature, and probably by the Judiciary of the State. That to quell that resistance, if force should be resorted to by the Government, it would produce a civil war; and that in that event, he had no doubt the leaders of the party would secure the co-operation with them of Great Britain. That their object was and had been for several years, a dissolution of the Union, and the establishment of a separate Confederation, he knew from unequivocal evidence, although not proveable in a Court of Law, and that, in the case of a civil war, the aid of Great Britain to effect that purpose would be as surely resorted to, as it would be indispensably necessary to the design.

That these letters of Mr. Adams to Mr. Giles, and to other members of Congress, were read or shown to Mr. Jefferson, he never was informed. They were written, not for communication to him, but as answers to the letters of his correspondents, members of Congress, soliciting his opinions upon measures in deliberation before them, and upon which they were to act. He wrote them as the solicited advice of friend to friend, both ardent friends to the administration and to their country. He wrote them to give to the supporters of the administration of Mr. Jefferson, in Congress, at that crisis, the best assistance, by his information and opinions, in his power. He had certainly no objection that they should be communicated to Mr. Jefferson; but this was neither his intention nor desire. In one of the letters to Mr. Giles, he repeated an assurance which he had verbally given him during the preceding session of Congress, that he had for his support of Mr. Jefferson's administration no personal or interested motive, and no favor to ask of him whatever.

That these letters to Mr. Giles were by him communicated to Mr. Jefferson, Mr. Adams believes, from the import of this letter from Mr. Jefferson, now first published, and which has elicited this statement. He believes, likewise, that other letters from him to other members of Congress, written during the same session, and upon the same subject, were also communicated to him; and that their contents, after a lapse of seventeen years, were blended confusedly in his memory, first, with the information given by Mr. Adams to him at their interview in March, 1808, nine months before; and next, with events which occurred during the subsequent war, and of which, however natural as a sequel to the information and opinions of Mr. Adams, communicated to him at those two preceding periods, he could not have received the information from him.

<sup>18</sup> OTIS, HARRISON GRAY. (1765-1848.) Born and died in Bos-

to dissolve the Union and to re-annex New England to Great Britain; and that he (Mr. Adams) possessed "unequivocal evidence" of that most solemn design. The reader will also observe, that in the statement, just published, of Mr. Adams, there is no

ton; Graduated Harvard, 1783; U. S. Dist. Atty., 1796; State Representative, 1796, 1802-1804, 1813; Speaker, 1803-1804; member U. S. House of Representatives, 1797-1799, 1803-1804; State Senator, 1805-1816; President of Senate, 1805-1810; Presidential Elector, 1812; United States Senator, 1817-1822; member Hartford Convention, 1814; Mayor of Boston, 1829-1831.

<sup>16</sup> DEXTER, SAMUEL. (1761-1816.) Born Boston; graduated Harvard, 1781;; State Senator, 1792; member U. S. House of Representatives, 1793-1795; United States Senator, 1799-1800; Secretary of War, 1800-; Secretary of the Treasury, 1801; member Governor's Council, 1804; one of the most eminent lawyers and advocates of his time. Died in Athens, N. Y.

<sup>17</sup> PRESCOTT, WILLIAM. (1762-1844.) Born Pepperell, Mass.; graduated Harvard, 1787; member Mass. House of Representatives, 1798-1802, 1811, 1821-1823; State Senator, 1804; member Governor's Council, 1809, 1812-1813, and Hartford Convention, 1814, and of Constitutional Convention, 1820; Judge Court of Common Pleas, 1818, 1819. Retired from practice in 1828, and died in Boston.

<sup>18</sup> THORNDIKE, ISRAEL. (1755-1832.) Born Beverly, Mass.; apprenticed to a cooper, he became a privateer and wealthy ship-owner during the Revolution; member Mass. Legislature, 1788-1802-1808, 1815; of the Constitutional Convention, 1788, and of the State Senate, 1807-1814. Removed to Boston in 1800, and at his death there in 1832, was the richest man in that city.

<sup>19</sup> QUINCY, JOSIAH. (1772-1864.) Born Boston; graduated Harvard, 1790; member Mass. House, 1820; Speaker, 1821; State Senator, 1813-1819; Congressman, 1805-1813; member Constitutional Convention, 1820; Judge Municipal Court, 1822; Mayor of Boston, 1823-1828; President Harvard College, 1829-1845. Died in Quincy.

<sup>20</sup> RUSSELL, BENJAMIN. (1761-1843.) Born and died in Boston; a printer, and private in Revolutionary War; editor *Columbian Centinel*, 1784-1825; member Mass. House, 1805-1821, 1824-1835; State Senator, 1822-1825; member Governor's Council, 1836-1837, and of Constitutional Convention, 1820; Alderman of Boston and Commander of the Ancient and Honorable Artillery; was the originator of the term, "Gerrymander," and "Era of Fine Feeling."

<sup>21</sup> WELLS, JOHN. (1764-1855.) Born and died in Boston; graduated Harvard, 1782; was a merchant and largely interested in foreign trade; member Mass. House, 1804-1808, 1823-1830; State Senator, 1809-1813, 1817, 1820; member Governor's Council, 1815, and of Constitutional Convention, 1820, and of City Council, 1822, 1823.

intimation whatever, that he does not still believe, what he revealed to Mr. Jefferson and Mr. Giles twenty years ago. All the gentlemen, we have mentioned above, are, with one exception, still living, and, with two exceptions, are active and ardent political friends of Mr. Adams. We here beg leave to ask, why Mr. Adams' statement has been withheld from the public eye more than a year? Why it has been published only one fortnight before the election for President all over the country? Why for three years he has held to his bosom, as a political counselor, Daniel Webster, a man whom he called, in his midnight denunciation, a traitor in 1808? Why in 1826 he paid a public compliment to Josiah Quincy, in Faneuil Hall, whom he called a traitor the same year? And as the last question, why during the visits he has made to Boston, he always met in friendly and intimate and social terms all the gentlemen, whose names a few years before, he placed upon a secret record in the archives of our government as traitors to their country? Why did he eat their salt, break their bread and drink their wine?"

The indictment framed upon the above libel, as would be seen, contained two counts, or rather two methods of charging the same offense. The first count stated that the defendant had asserted that Mr. Adams had said that "Daniel Webster and others of the Federal party, etc., were engaged in a plot to dissolve the Union and to re-annex New England to Great Britain—and that he (Mr. Adams) possessed unequivocal evidence of that most solemn design." This count was grounded upon the alleged statement of Mr. Adams and referred probably, though I would not anticipate the defense, to the statement of Mr. Adams published in the *National Intelligencer*, afterwards in the *Jackson Republican*. The second count alleged that General Lyman, the defendant, had said "why has he (meaning John Quincy Adams) for three years held to his bosom as a political counsellor Daniel Webster, a man whome he called in his midnight denunciation a traitor in 1808," etc., as also "why during the visits he has made to Boston, he always met in friendly and social terms all the gentlemen, whose names a few years before, he placed upon a secret record in the archives of our government as traitors to their country? Why did he eat their salt, break their bread and drink their wine?" He, General Lyman, meaning according to the language of the indictment to say that Daniel Webster was a traitor recorded as such upon the

records of our country in 1808. This was not the assertion of Mr. Adams, but of General Lyman.

To these two counts it was essentially necessary to apply, distinctly, the principles of law. The first, was as to the assertion of Mr. Adams; the second, as to the denouncement of Mr. Webster, as a traitor, etc.

The *Solicitor* then read the letter from Mr. Jefferson to Mr. Giles, printed in the *Jackson Republican* and dated December 25, 1825. But General Lyman, in the libel alluded to, attempts to designate and mark out who those Federalists were, by name—if the assertions of General Lyman were not warranted by the letters referred to, then, and in such case, General Lyman must be deemed to be the original libeller. The defendant had asserted that the name of Daniel Webster had been recorded upon the secret records or archives of our country, by Mr. Adams, as a traitor. This was evidenced by the inquiry, "Why, etc., has he met on friendly terms, etc., those whose names he has placed upon a secret record, as traitors to their country?" on this head, relative to the second count, the allegation was perfectly original on the part of General Lyman, and not authorized by the statement of Mr. Adams—to show this, I shall read so much of Mr. Adams' statement as was the groundwork of the assertion, which was merely a statement with regard to the Federalists of Massachusetts, and not relative in any shape, to the character, acts, or opinions of Mr. Webster, who then was an inhabitant of New Hampshire.

In the course of the evidence, I first show that Mr. Webster was a Senator of the United States. In the next place, show the author of the libel to have been General Lyman, and then proceed to show the circumstances attending it: after having gone thus far, I should not undertake to anticipate what might be the nature of the defense set up—I should hereafter govern myself by the circumstances developed in the course of trial. But still I would add, in the outset, that the extended character of the individual libelled would designate that the injury was co-extensive with that reputation,

and in fact that the remedy or antidote should be equal to the poison disseminated.

The *Solicitor* said his endeavor would be to give a full and clear view of the grounds of the prosecution, without any puerile attempts at parade; so that the points in issue before the jury, should be clear and well understood. He had one or two authorities to adduce, relative to the general law of libel, which might well apply particularly to this case—he here cited Holt 283-4 (see notes, p. 12), relative to the ingredients of libel and to its particular definition. It was the publication of a matter, either by picture, painting, printing, or otherwise, which in and of itself, tended to accuse an individual of crime, or to hold him up to public contempt or ridicule. The public were interested to prevent all such libellous matter, for it tended toward personal assault and to a disturbance of the public peace, by provoking the party aggrieved to wrath, and to a taking of the law into their own hands. If the publication itself was of a virulent nature, the fact of this virulence appearing to the jury, was a sufficient proof of malice *ab initio*, and therefrom malice was implied. In the first count, the law, so far as it relates to a repetition of a slander would apply, provided that General Lyman, in the recapitulation of the article admitted to have been written by President Adams, has repeated exactly the words originally used by Mr. Adams.

That which was alleged as to have been declared by Mr. Adams, was not borne out by the statement referred to. If it had been thus substantiated, and if the truth of the accusation which was the ground of the libel had been proved, this truth would have been by a state law of this commonwealth a complete justification: but no such justification had been attempted, unless by an affidavit to which he might have occasion to refer in the course of the trial. He then referred to Starkie on libel (pp. 244, 245, 246, 247), wherein cases of reporting the proceedings of public bodies were referred to, and where the circumstances of those cases were in a degree similar to this under consideration; the supposed libellant



there undertook to report the proceedings of a public body, which he had a right to do—but yet, if a person in repeating the publications or sayings of another, undertakes to color or misrepresent that statement, he is the original libeller in the eye of the law. One has the right to report the proceedings of a legislative or judicial body, but his must be a plain and unvarnished history of things as they occurred—and his quotations must be literally correct. Any departure from this, subjects him to the charge of libel, and he is considered as having an original intent to defame, especially if a coloring of the circumstances of the trial or proceedings exhibits a feeling in the reporter, adverse to him who is said to be defamed. The inference of an intent to defame, is drawn from the circumstances of the case. To these points he cited Pickering's Reports, Vol. 2, p. 117. Under the pretense of a correct recital, no one had a right to use malice.

That a correct account of the statement of Mr. Adams had not been given, was, as might be said, the corner stone of the present prosecution, and that even the absurd and unfounded assertions of Mr. Adams himself were not either correctly stated by the defendant in this action, or in any way justified. The sole essence of the charge of libel was a malicious intent—two things composed especially its ingredients—first, that the charge should be false, and second, that it was done from malicious motives. In order to explain what malice meant in the view of the law, he would read from Holt 47:

Printing a libel is publishing it. The printer gives a body and activity to the poison, which is mixed up in private, and would lie in a quiescent state, if no persons could be found to put it into that form which is best suited to give it publicity. Printers and booksellers have therefore been justly deemed the instruments of the crime. Whatever be the motive of the printer or publisher, if an injury be done to the public or an individual, he must, and ought to be answerable for it. The law presumes guilt from every act of public mischief, and imputes a malicious intent to an act which is injurious to another. But facts or circumstances may enhance or mitigate that implied guilt, and vary the degrees of it.

A libel was a malicious publication, expressed either in printing or writing, or by signs and pictures, tending either to blacken the

memory of one dead or the reputation of one alive and expose him to public hatred, contempt, or ridicule.

Malice in legal understanding implies no more than wilfulness. The first inquiry of a civil judicature, if the fact do not speak for itself as a *malum in se*, is to find out whether it be wilfully committed; it searches not into the intention or motive any further or otherwise, than as they are marks of a voluntary act; and having found it so, it concerns itself no more with a man's design or principle of acting, but punishes, without scruple, what manifestly to the offender himself was a breach of the command of the legislature. The law collects the intention from the act itself; the act being in itself unlawful, an evil intent is inferred and needs no proof by intrinsic evidence. Holt's Law of Evidence, pp. 97, 98, 283, 284.

There were two senses in which the term ought to be used—one a legal and the other a moral sense—for instance, one in the words of the quotation could not scatter firebrands, arrows and death, and then say, am I not in sport? The import of the words themselves, and the moral intention of the person using them, was to be considered—the effect of those words, and not the feeling of the one publishing them, was the true interpretation which the law would give to libellous matter. He then read from the third volume of Pickering's Reports to prove that the deliberate publication of a calumny, false in its nature, was an internal evidence of malice—also, he assumed a legal ground, that a lack of proper caution in the republication of libellous matter inferred malice, especially if the author was aware that such assertions were false, or that the publication of an article which to the publisher's own knowledge was false, was a legal evidence of malice. To these several points he cited Starkie (pp. 252, 451, 274, 275, 869, 870), all of which citations more or less tended to strengthen the positions by him taken.

#### THE EVIDENCE FOR THE COMMONWEALTH.

Mr. Davis produced in evidence certificates signed by William C. Jarvis, Speaker of the House of Representatives, and Edward D. Bangs, State Secretary, that Daniel Webster had

been elected by the House and Senate of Massachusetts a Senator in the Senate of the United States for the term of six years, from March 3, 1827.

Francis O. Dawes. Since the

day of the publication I called at the office of the *Jackson Republican* and purchased a paper, containing the alleged libel upon Mr. Webster, of a gentleman with whom I was not acquainted, but who was in the office, on which I made a memorandum of the day and place of purchase.

*Cross-examined.* I made the purchase at the request of Charles P. Curtis, on 31st October. Was then a student in the office of Mr. Curtis. Messrs. Curtis and Webster were together at the time of my going to purchase the paper. I heard nothing then said about Gen. Lyman as the author of the offensive piece.

*John Putnam.* Was not the editor of the *Jackson Republican*, but was simply one of the publishers of it; it had an extensive circulation, principally in New England, and particularly in New Hampshire, Maine, and

Massachusetts, and more or less in every State in the United States. Some went to the South, to Tennessee, Washington, etc. Did not know whether to the heads of the Department of the United States or not. I have not the direction of the several bundles. Some members of Congress were among the subscribers. Mr. Lyman was one of the proprietors of the paper. The number of subscribers were about six hundred; with the exchange list, which was liberal, about seven hundred were circulated; about one thousand printed, from the number left on the shelves. We received a letter from Richard Fletcher<sup>22</sup> and C. P. Curtis<sup>23</sup>, asking the name of the author of the article now in question. Col. Orne was informed, an answer was sent to it.

The *Solicitor General* then read the answer as follows:

Boston, Saturday Morning, Nov. 1, 1828.

Gentlemen: Your letter, dated October 31, and addressed to Messrs. Putnam and Hunt, the publishers of the *Jackson Republican*, was received by them yesterday afternoon, and a few hours after delivered to us.

In this letter you request information as to the names of the editors of the *Jackson Republican*, and the name of the author of some remarks on the subject of Mr. Jefferson's letter to Mr. Giles, and Mr. Adams' statement thereon, published in a *Jackson Republican* of Oct. 29.

You also observe, that you make these inquiries on behalf of a gentleman whose name is mentioned in those remarks.

In answer to the first portion of your inquiry, we beg to say, that there is no regular, permanent editor engaged for the *Jackson Republican*, but that the principal direction of it is in the hands of Henry Orne, whose name is written below, and in reply to the

<sup>22</sup> *Ante*, p. 337.

<sup>23</sup> CURTIS, CHARLES PELHAM. (1792-1864.) Born and died in Boston; graduated Harvard, 1811; member Mass. House, 1838-1842; City Solicitor Boston, 1828.

second, we take this opportunity to say that the remarks, to which, we presume, you allude, were written by Theodore Lyman, Jr., whose name is, also, subscribed to this letter.

You have not mentioned the name of the gentleman, on whose behalf you have made these inquiries, nor the object he had in view in causing them to be made. Though we should be justified in requiring his name at your hands, yet we readily answer your inquiries, presuming that you were fully authorized to take the step, you have done.

We remain, gentlemen,

Your very obedient humble servants,

Henry Orne,  
Theodore Lyman, Jr.

The *Solicitor General* said that he had introduced the grounds of the prosecution—the libel itself and its nature—had proved the fact of its publication, as also the author. For the present on the part of the government, he should rest his cause here.

#### MR. DEXTER'S OPENING FOR THE DEFENSE.

*Mr. Dexter* stated that in the opening of the defense his duty was of a humble nature—he was precluded from the argument of it, by the regular rules of court, for that would rest in abler hands—he should only offer a few general remarks, applicable to the nature of the case, and state the law and fact upon which the defendant would rely: in this charging this duty he should be extremely brief, as it was the wish of all concerned that this cause should occupy but one day. The course of the defendant would not be upon the offensive but strictly defensive. The counsel for the defendant would endeavor to satisfy that jury, that he never intended to libel Mr. Webster: upon the law there could not be much disagreement between them and the Attorney for the government, for the law was unequivocally plain; if, in the course of such a defense which was purely defensive, any accusations against the complainant were to be made, it would but ill support such defense, as he now should offer. He would now, in the outset, boldly assert that the prosecution originated in a mistake: but, still, as the prosecution

now had met them, they must be prepared to encounter it, upon its legal and just merits. On the part of the defendant, it was a subject of regret. The feelings of one of the parties had been injured, and now all that was to be done, was for the jury to take the subject into consideration, and to decide without regard to the consequences which were to ensue. What might have been the best course to have been pursued the prosecutor was the best judge. It was now the duty of that jury, upon their oaths, to decide upon the innocence or guilt of the defendant. There was but one course before them—they must say guilty or not guilty. No matter what were the characters and standing of the parties, political opinions and prejudices were to be discarded, and every feeling of partiality banished from their breasts, when they came to a decision of this cause.

The question which they had to decide was rather of a grave nature, for it concerned the freedom of the press and the rights which individuals had, to discuss questions of political moment. Many of the public, whom curiosity had drawn together at this trial, might be disappointed in the course which this trial might take: they might expect strange developments relative to former political events—but no such developments would be given, if these existed, and as he believed, little probability would arise to gratify curiosity thus excited. In great political questions, such as of late have agitated this country, it was not to be expected that the controversy would be confined to the parties themselves who were candidates, but must involve the names of their distinguished supporters, when the merits of each candidate were discussed. The latitude taken and allowed was of wide nature, under such circumstances; but still for the defendant in this case, and as it referred to Mr. Webster, as set forth in the indictment, for his client, he denied totally and unequivocally all intentions injurious to or derogating from the character of Mr. Webster. In cases of libel under the law, as it now existed, there were two modes of defense—one was simple; to deny the act and the malice, and to put the pros-

ecutor to the proof of both—the other, to assert the truth of the matter contained in the supposed libel, and that it was published from good motives and justifiable ends. It might seem from an affidavit filed in this cause, that the defendant intended to justify himself, by proving the truth of his allegations—yet, relative to giving the truth in evidence, in former times, it was a legal maxim, “the greater truth the greater libel. At the present day, the truth might be given in evidence, and by a statute of this commonwealth, amount to a complete justification. Still, notwithstanding the tenor of that affidavit, it was not intended to attempt to justify on the ground of the truth of these statements, declared upon in the indictment. The fact was, that the defendant was called upon, after short notice, to reply immediately to an indictment charging him with an offense, serious in its consequences. His counsel did not have time to consult together—believing, however, that some further light might be thrown upon this subject by Mr. Adams, an affidavit was filed for the purpose of obtaining a continuance, setting forth what the defendant expected to prove, by Mr. Adams and other witnesses then absent. This motion was overruled by the court, and the trial ordered to proceed. He did not believe that if the continuance had been granted, that other grounds of defense would have been taken, different from those now assumed. That motion for a continuance was overruled upon the common and legal rules of the court; it was perfectly proper so to overrule it, and his client did not complain of wrong in this particular: in truth his defense would have been on a continuance, probably the same as now offered. This defense was in substance—1st, that the matter purporting to have been published by General Lyman, in the *Jackson Republican*, was not in and of itself libellous, so far as the defendant was concerned; and in the second place, that in the publication of General Lyman there was no malice intent, which was a principal ingredient in the charge of libel. The nature of this charge against the defendant was both serious and novel. It was usual and perhaps necessary, on the part

of the government, to charge one with a false and malicious libel—but here the Solicitor had seen fit to declare in the indictment, that General Lyman was an evil-disposed person, and intending to defame, etc., Daniel Webster, did publish the following false, malicious, and infamous libel. These were hard words, not necessary to have been used in technical language, easy to be said but not easily to be proved—the word scandalous was common; but his brother and himself, in that case, had searched for a long period, among the precedents of the present and past ages to find a parallel, and in only two cases could they discover that the word infamous had ever been used in an indictment of this nature.

On the part of the defendant, it was strictly denied that there were any malicious motives actuating him in the publication complained of. And as to the truth, the repetition of the charges of Mr. Adams were so nearly true that no one could say that it was wilfully untrue; or that the application of the assertions of John Q. Adams to a certain individual were so nearly correct, if not absolutely so, as to leave no imputation upon General Lyman's mind, when he thus applied the observations of Mr. Adams. In the first place, he should deny that the publication was, of itself, a libel; and in the next, if the matter was libellous, there was no malice on the part of General Lyman.

The nature of the charge against the defendant was, as he had before observed, for an infamous libel. It was the obvious intent of the prosecutor, to stamp this offense as one of no ordinary nature—as one of peculiar aggravation—in the outset to give a character and coloring to the transaction, such as would arouse the feelings of a jury. But here the poison carried its own antidote with it—if it was a crime, an infamous crime, of no ordinary magnitude, so much greater must be the plentitude of proof to convict the defendant of such an aggravated offense; the charge was one marked with uncommon severity, and extremely, and, as he thought, unnecessarily disreputable to the defendant. The defendant was charged with having been an evil and wickedly disposed

person, who wantonly and maliciously had published an infamous libel on the character of Daniel Webster, a Senator of the United States. With regard to implied malice, they were the judges of the law and fact, not only of the malice but the implication of it. The prosecutor and the defendant's counsel would not disagree much relative to the law in this case. It was perfectly simple and plain, and was more allied to plain common sense than at first would be imagined. It was said by the Solicitor, that malice was to be inferred or proved, if the matter complained of was libellous in its nature—that the malice might be a thing of inference. Still, if the article was not malicious on the face of it, the jury had a right to go into all the attendant circumstances, to take the whole subject together, and then decide upon the motives and feelings actuating the supposed libeller; he, the Solicitor, had said that if there was malice apparent on the face of the supposed libel, the jury were not bound to look further, but decide upon such fact so exhibited—but still he conceived that the jury, as judges of the law and fact, had a right to take the whole case into consideration, and decide upon the result, drawn from a careful consideration of the whole facts in issue.

The point assumed by the Solicitor was not so formidable as it, at first, seemed. If it were not that the jury, being the judges of the whole law and facts, had a right to draw their conclusions from the whole of the facts in evidence, the law delegating such power to them would be absurd. In order to arrive at a correct result they must examine all the facts in the case, and on these must their verdict be founded.

Malice was the essence of the crime charged, and of this the jury were the sole judges—if they were convinced that there was no malice, there was an end of their inquiry—if there was a doubt on this subject, they would go to the whole of the sources of the testimony and from thence gather the result—on this they were not confined, but must judge for themselves, relative to the time when the supposed libel was published. No extraneous evidence was to be introduced, but



the jury were confined to the circumstances of publication. It had been said that even a publication of the truth was an aggravation of the offense of libel—that doctrine was now exploded—and though the truth of the accusation was not now to be set up in justification, yet it would in this case be necessary for this fact to be kept in mind. The breach of the public peace, while consequently might happen, and was the groundwork for a public prosecution, was not paramount to all others, for now the truth might be published concerning any individual, if it was done from good motives and justifiable ends. In such case there was no crime—if no malice appeared upon the face of the libel, or even if there did, the jury had a right to inquire into the attendant circumstances of the case.

If there was no libel upon the face of the paper, the jury certainly had a right to inquire into the circumstances of the case. In the first place he contended there was no libel, taking the matter set forth in the sense in which the author intended. He then cited instances wherein a man was not considered as a libeller, if the intent to libel was not satisfactorily proved, but was intended in a different sense from what a part of the words would seem to imply; for instance, when a man had said that another was a murderer, because he had killed every animal but a human being; this was no libel, for no crime was stated, taking the whole sense of the words into view. Another where it was said that a man was a thief, because he had stolen a lady's heart; here the sentence must be construed together and no crime was charged. In 1st Johnson's Cases (New York), for slander, the allegation was, that "John Keating was a d—d blackhearted highway robber, and murderer," which related to a contest about a bass viol in a church wherein Keating and others attempted forcibly to obtain possession of a bass viol, the property of a certain church, or individual of it, in which one of the parties was seriously injured and there was a stabbing. The jury, in this case found a verdict of guilty—but the court set aside that verdict, for the expression was connected with

certain known facts of a public procession, etc., which taken in connection with such facts, marked the case with an innocent character, and the defendant finally was acquitted.

There was also an ironical sense in which words might be used, in which the author might be freed from the charge of libel. The word traitor was of rather vague signification, when used in a political sense. It was rather a popular word when politically applied. Was it intended by Mr. Lyman to call Mr. Webster a traitor? Did it give a fair construction to the words used by Gen. Lyman? Treason by the laws of the United States was considering only the act of levying war against the nation, or of affording aid and comfort to her open enemies. If Mr. Webster was not a traitor in that sense, or if he was not charged in that sense, there was no ground for an accusation of libel; the accusation of his having been a traitor must be taken together with the corresponding circumstances; if he was not charged with having been a traitor, in the sense given by the constitution of the United States, there was no criminal charge against him. But it was said that Mr. Adams had written a letter to Mr. Giles, which letter was copied into the same paper, in which the libel was said to have been written, accompanied by the statement of Mr. Adams; but the alleged libel in question was a mere commentary upon those documents, which any man had a right to make. They were with the commentary, all to be construed together; if from the whole there was no obvious intent to libel, the defendant must be acquitted, if he, Gen. Lyman, did not intend to bring Mr. Webster into disrepute and infamy, by such commentary, the matter was not libellous. He contended that all the defendant intended to say was, that Mr. Adams charged the prosecutor with having been a traitor, etc., and that he had placed upon the records of the archives of government, etc., certain New England Federal leaders of the year 1808, and that the prosecutor was one of them. He contended that the true meaning of the letter of Mr. Adams, bore out the assertions of Gen. Lyman. Mr. Adams had asserted that during the Embargo, certain

New England Federal leaders had been guilty of treasonable plots to dismember the Union; which facts he could not "prove in a court of law," and had not affixed that design to Daniel Webster. The only thing which Gen. Lyman had done, was to give an interpretation to that assertion, undoubtedly intended on the part of Mr. Adams, and for which he was now held responsible for an infamous libel. It was further said, that Mr. Adams had broke their bread and drank their wine, whom he had stigmatized as traitors. The question now was whether Gen. Lyman had given a fair interpretation to the words of Mr. Adams, or rather whether he had given an unwarrantable commentary upon the meaning of Mr. Adams. He had only given the names of those persons intended by Mr. Adams to have been meant, and had merely given a direction to the intended object of the calumny of another. He should now proceed to relate some of the circumstances pertinent to the case. In the first place he should state, that the paper in which the alleged libel had appeared was a paper established to support the cause of Gen. Jackson in opposition to Mr. Adams as President of the United States. The persons said to have been libelled, were the personal friends of the defendant. Mr. Lyman in the old divisions of parties, was a Federalist, and all those named in the indictment as equally libelled with Mr. Webster, though Mr. Webster was alone selected as the one libelled, were his personal and, formerly, political friends. Was it probable, that he, the defendant, would hold up to public detestation such men, his friends, who were in daily personal union with him? That he should be on such terms with men, whom he was willing thus infamously to libel? But it was said that the libel was untrue or false on the part of General Lyman, so far as Mr. Webster was concerned. Gen. Lyman asserted that Mr. Adams had said that Mr. Webster was one engaged in treasonable plots, etc., because Mr. Webster then belonged to New Hampshire, and not to Massachusetts; for Mr. Adams alluded to the Federalists, and to none of any other State; that he had not mentioned any other

leading Federalists than those of Massachusetts. But he contended that the expressions of Mr. Adams alluded to all the leading Federalists of the Eastern States of New England, and would apply as well to New Hampshire as Massachusetts. But be this as it might—he denied that there was any wilful falsehood on the part of General Lyman, as taken in connection with the facts of the case. Gen. Lyman never had any thing to do with politics until 1819; and then upon his return from Europe, he found Mr. Webster an active and leading Federalist, in Boston. It might have escaped his recollection, that Mr. Webster in 1808, resided in New Hampshire, in hastily penning a newspaper paragraph. But suppose this to be true or untrue, he was at that time a leading Federalist in New Hampshire, and opposed to the embargo, and virtually was embraced in the denunciation of Mr. Adams. The territorial line demarking the several States, could not be of much consequence, if the spirit of Mr. Adams' letter included the leading Federalists of New England, and Mr. Webster was one of them. The application of the spirit of Mr. Adams' letter under such circumstances, was not intrinsic of express or implied malice, but of the contrary. The whole circumstances went to show there was no malice on the part of Gen. Lyman in giving a true interpretation to the meaning of Mr. Adams.

After the indictment, General Lyman, upon a very short notice, was called before that court; his counsel, with little time for consulting together, were called upon for a defense; the defendant was arraigned, who, for the purpose of a continuance, upon grounds which he had every reason to believe were correct, made affidavit that John Q. Adams was a material witness, as he believed, in that case, and who would be within this Commonwealth, as he also believed, on or before the next session of this court. This was after his arraignment; then, true it was, that a public offer was made by the Solicitor to postpone the trial, if the defendant would swear that he expected to prove, by the before-named witness, the truth of the libel—or that, if proper explanations

were made, that a *nolle prosequi* would be entered; but these propositions were such, that no honest or honorable man could possibly swear to or comply with—the affidavit only went so far as to state, that John Q. Adams was a material witness, but with regard to what he would swear, after his declaration in the *National Intelligencer*, it was difficult for Gen. Lyman to say, more so, to swear to. The offer of a *nolle prosequi*, under the circumstances in which it was made, did not operate against Gen. Lyman, for at that period he was arraigned, and charged with being an evil disposed person and guilty of an infamous libel. Thus situated, however, he might have been disposed previous to such accusation, thus publicly charged, it was not to be expected that he could honorably consent to explanations, until the nature of this charge against him had been fully investigated. Previous to any explanation, or even the asking for one, which he was always ready to have given, when applied for, a prosecution was openly threatened on the part of Mr. Webster; it was a subject of common conversation. A letter came from two attorneys, asking the name of the authors of the piece, considered as offensive; this very letter did not name by whose authority the demand was made, but to which a prompt reply was given. No other application ensued to obtain an explanation; but soon a prosecution followed on the part of Government. He appealed to that jury, whether, under such circumstances, it would not have been degrading to the defendant to have consented to have offered any apology or explanation; he had, rather than do so, submit his cause and motives to a jury of his country. As he had spoken of letters, he would now refer to them—the first was a letter from Messrs. Curtis and Fletcher to Messrs. Putnam and Hunt, inquiring who was the author of the offensive article in the *Jackson Republican*. This letter was replied to, as has been before stated.

It was admitted that Gen. Lyman was one of the proprietors of the *Jackson Republican*, and sometimes wrote for it—that he wrote the piece in question; but he wished it distinctly to

be understood that, throughout the whole defense, it was contended that malice was never intended on his part in the writing complained of. But to return to the letter which had been read, it showed sound reasons for not arriving at an explanation, which, if no prosecution had been instituted, easily might have been had.

*Mr. Dexter* then referred to the affidavit and the admissions contained in an accompanying paper, by the Solicitor. It was admitted that *Mr. Webster* was a leading Federalist in 1808, and following years, in the terms of the affidavit, and opposed to those restrictive measures then introduced by the National Government, and that he enjoyed the confidence of the leading Federalists of New England. The affidavit says:

And the said *Lyman* further believes and expects to prove, that the person so referred to, by said *Adams*, as aforesaid, were the eminent men of a certain political party in New England, then known as the Federal party; and that the said *Daniel Webster*, was in and about the year 1808, and for many years after that time, an eminent and conspicuous member of said Federal party, and being a person of distinguished talents and influence, and enjoying the general confidence of the said Federal party, did participate in, and by means of his said talents and influence, greatly urge and promote the measures of opposition to the embargo and restrictive system, then pursued by the general government, and deemed so injurious and oppressive to this section of the Union.

The admission of the Solicitor General is in these words: "It is admitted that *Mr. Webster* was an eminent and conspicuous member of the Federal party, etc., in the terms of the affidavit. But it is not admitted that he was one of that description of persons referred to by *Mr. Adams*."

*Mr. Dexter* alluded to a certain pamphlet called "Considerations on the Embargo Laws," and offered it or extracts from it in evidence.

The *Solicitor General* said, that he had known nothing of this before, and if it was to be offered in evidence, the whole or none must be read—he was utterly ignorant of its contents; he should not admit it in evidence to the jury, without its being read entire.

## THE EVIDENCE FOR THE DEFENSE.

*Hon. Daniel Webster.* I wrote this pamphlet; had written a pamphlet with that title, and from this and its size, presume it is the same. It was during the embargo, or some suspension of it—cannot fix the month—perhaps not the year; the embargo was laid in December, 1807, and this, I think, was written in the summer of 1808. Concerning my authorship of the Rockingham Memorial, that question related to the year 1812. Am not bound to acknowledge every paragraph I have ever written, whether anonymous or not. That Memorial, however, was written by a committee of which I was chairman; how far the writing or sentiments were written by me, or how much they were modified by the various members of that committee, I now could not tell—at all

events, I assented to all contained in that Memorial at the time, and to the proceedings of the meeting.

*The Solicitor General.* Did you know when the application was made, that General Lyman was the author of the supposed libel? I did not, though I had some slight reason to suspect that he was, from his connection with the paper—still I did not believe it; held a conversation in State street, with two individuals who had not been named in the course of the trial, one of whom thought, from some peculiar expressions, that General Lyman was the author; the other, the contrary. I never was convinced or fully believed that he was the author until the letter referred to was shown me on the evening of the 1st November, or morning of the following day.

The *Solicitor* observed that if a part was called for by the defendant's attorneys they must read the whole, to which he could not object.

*JUDGE PARKER.* The time to be embraced in reading it was material; he had no doubt but what Mr. Webster wrote as strongly against the embargo as any one could.

*Mr. Webster.* I meant to.

*JUDGE PARKER.* I myself thought it unconstitutional. The pamphlet tended to show that Mr. Webster was one of the individuals intended by the observations of Mr. Adams.

*Mr. Hubbard.* It was alleged by Mr. Adams that an intention existed on the part of the leading Federalists in New England from the year 1808, down to the close of the war, to sever the Union and to re-annex themselves or the New England States to Great Britain. Mr. Webster was then one of the leading Federalists of New England; and, consequently, one of those charged by Mr. Adams. The Embargo pamphlet and the Rockingham Memorial, acknowledged by Mr. Webster to have been principally written by him, went to show this fact. If this was apparent, then there was no malice on the part of General Lyman in classing Mr. Webster with other distinguished Federalists in New England.

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*Mr. Davis.* If they intend to prove the truth of the allegations by producing the pamphlet, and that Mr. Webster was engaged in a treasonable plot to dissolve the Union, etc., they had better read it—if not, it was better in Scottish parlance “to keep their bread below their broth.” If it was used for that purpose the whole, if any, must be read.

*JUDGE PARKER.* If the constitutionality of the Embargo is on trial, I should be glad to hear it read.

*Mr. Dexter* then offered the “Rockingham Memorial” in evidence, which was rejected, as inapplicable to the issue. He then put in the case the previous numbers of the *Jackson Republican*, for the purpose of showing that Mr. Webster had never been named in any article written by General Lyman.

*Judge Orne.* Have examined the articles as marked in the schedule, and recognized that Gen. Lyman had written all the articles thus marked; was satisfied that they were correct. The piece in question was written by General Lyman. The object of the *Jackson Republican* was to oppose the re-election of John Quincy Adams. Am not able minutely to state what was the circulation of the *Republican*; the exchange was rather extensive than otherwise—it circulated more or less in most of the States of the Union—there were about one thousand printed—did not think that all were distributed. With regard to the present prosecution, first heard that Gen. Lyman was to be sued, one or two days before the letter to Putnam and Hunt. This information was obtained at the Theatre. The publication was on the 29th October—the letter was received on the 31st. Mr. Webster’s name was mentioned as the person libelled; communicated the information the next morning to Gen. Lyman, after I had received it; had understood sometimes that Lyman, and at others, that myself or both were to be sued or prosecuted for a

libel, on account of said alleged libel contained in the article in question; could not state exactly when those facts came to my knowledge; also heard that Major Russell was the complainant; had no conversation with Gen. Lyman concerning the article; learned from Mr. Austin that Mr. Webster was the complainant. After conversing with Col. Austin did not hear from the grand jury of the Municipal Court. This was about the close of October. A settlement of an account with Mr. Austin, of a public nature fixed the date.

*Benjamin Russell.* Heard Mr. Webster say that he intended to prosecute soon after the publication of October 29th in the *Jackson Republican*. I sent for the paper, and read it; did not then understand it; then asked Mr. Webster if he had seen it. He said he had; then asked if it did not contain a libel. Mr. Webster replied that he should try to make it so, or ascertain the fact, or words to that effect. Previous to this conversation had thought that the piece alluded to, or meant me, but found it was in better hands than my own; felt proud to be in such company as I was ranked

amongst in that libel; never thought General Lyman to have been the author of the piece in dispute, but had always attributed it to the honorable gentleman who just left the stand. With regard to newspaper controversies had heretofore had some experience, and some little practice. In this case had intended to have tried the case of libel myself, but circumstances had rendered it unnecessary.

*Henry Williams.* Informed Mr. Lyman I had heard that Mr. Webster was about to institute a suit against him, this was on the evening of the 29th or 30th of October last; obtained my information from Capt. Jones of the Liverpool Packet Company, who told me this fact at the Merchants' Hall Reading Room, and who had it from Major Russell. It was a general report at the Hall. I called and informed Mr. Lyman that evening, the 29th or 30th, of the story which I had heard, in order to obtain a confirmation of denial of its truth. This was merely to satisfy my own curiosity, which was excit-

ed on the occasion—but Gen. Lyman could give me no information on the subject, having heard nothing of it.

*Col. James T. Austin.* Received a letter on the 1st November last, as prosecuting officer for the Government, which I was requested to lay before the grand jury as a complaint against the defendant for a libel on the Hon. Daniel Webster—the letter was brought by Mr. Curtis, who desired to know when it would be convenient for him to lay the subject before the grand jury. On the receipt of it and after I had read it, advised Mr. Curtis to go with it directly to the Supreme, rather than to the Municipal Court. Mr. Curtis replied that he was not aware that the Supreme Judicial Court had jurisdiction in a case of this nature. After I had satisfied him of the fact that they had, he took the letter away, and afterwards followed the course I had pointed out. The complaint was on the part of the Hon. Daniel Webster against Gen. Lyman.

*Mr. Dexter.* The indictment related to an article published in the *Jackson Republican* now in the case, and the offensive paragraphs must be taken in connection with all the other articles in the same paper. The first was an article headed, Political, and signed, A Pennsylvanian. This was extracted from a Pennsylvania pamphlet, which extract was furnished by Gen. Lyman, and related to Mr. Adams' assertions, and to the subject matter commented upon by Gen. Lyman. These facts were a part of the defense, as the jury would afterwards understand.

*Judge Orne* (recalled). At the first establishment of the *Jackson Republican* a number of pamphlets and papers were sent on from the southward to this paper. Having a perfect confidence in Gen. Lyman's judgment

Mr. L. had taken or made such selections as he deemed fit. Whatever was written by me had always been under the editorial head with few or no exceptions; had no conference with Gen. Lyman previous to the writing of

the article, in reference to its nature; had seen it, however, previous to its publication.

*Mr. Dexter.* We will state as admitted by the Government, Gen. Lyman was graduated at Harvard College in 1810; being then 18 years of age; that he went to Europe in 1812, and returned in 1814; that he went to Europe again in 1817 on account of his health, and returned in 1819; and that he took no part in politics till the winter of 1819-20.

*Warren Dutton.* Saw the publication alluded to on Wednesday after its publication. On Friday in the Mall met with Gen. Lyman, and from him understood that Mr. Webster complained of the publication; do not recollect that Mr. Lyman said he was threatened with a prosecution; could not relate the whole conversation, as it was desultory. Understood Mr. Lyman to say he did not intend to libel any one. Am intimate with the defendant. Mr. Webster, Gen. Lyman and myself are on friendly terms, and frequently together in a friendly association; never knew of any difficulty between the prosecutor and defendant. Mr. Lyman was a Federalist in the old divisions, and on good terms with Mr. Otis, Thorndike, etc., named in the indictment; am a connection of Mr. Otis.

*Mr. Webster* (recalled). In the years 1807-08 was a resident in New Hampshire; came to Boston, August, 1816; in the years 1808-09, had no personal or political connection with the persons named in the alleged libel; knew them merely as boys know men. While a student at law in this

town, knew Messrs Otis and Prescott by sight and reputation, and not otherwise.

*The Solicitor General.* Did you at that, or any other period, ever enter into any plot to dissolve the Union? No, sir. Will state the transactions relative to the alleged libel, as they transpired. On the day of the publication, or the next, was in an insurance office, the Suffolk, and my attention from the conversation was drawn toward it. It was also thus in other offices; and some conversation was held by me in the street with gentlemen to which probably the Solicitor has referred. From the conversation, and from the connection of Gen. Lyman with the paper, had some reason to believe, that he possibly might be the author; distinctly stated at or about this period, that I should not prosecute the publishers of the paper for this, what I should call, atrocious libel, for I had observed that the paper was printed for the proprietors. When I should find out who those were, I should give them an opportunity to prove the truth of the assertions. On the day of the date of the letter, signed by Messrs. Curtis and Fletcher, I called upon them as my counsel, professionally speaking, to inquire of the publishers of the *Jackson Republican*, to know the author of the piece in question. The return was the letter in the case, from Messrs. Lyman and Orne. I then directed my attorneys to inquire as to the jurisdiction of the Municipal or Supreme Judicial Court of the offense. It was two or three days previous to the sitting of the Municipal

Court, and ten or twelve days previous to the session of the Supreme Judicial Court. It was found that the latter had jurisdiction. Nothing was then done until I was satisfied that Gen. Lyman knew I intended to have a legal investigation. No explanation was given by Gen. Lyman, though I was satisfied in my opinion. I felt injured by the publication of the alleged libel in question. I heard nothing on the subject from Gen. Lyman. For myself I sought no explanation, and none on the other hand was given. In twelve days afterwards, I presented my case to the grand jury of Suffolk county.

*Charles P. Curtis.* The first information I received of the libel was on Friday, the 31st of October, two days after it was printed. At this time Mr. Webster applied to me professionally to ascertain who was the author of it; and also authorized me to retain Mr. Fletcher to assist me. On the same day the letter which had been mentioned, was written. Mr. Webster then did

not seem to be aware who was the author. In answer, the reply which had been read was sent by Messrs. Lyman and Orne. On 1st November the contents of that letter were communicated to Mr. Webster. I then had doubts whether the Supreme Judicial Court had jurisdiction in a case of this kind, and went to Col. Austin with this letter, etc., to obtain information. As a lawyer I preferred presenting the case to the Supreme Court, but was under the impression that cases of this nature were transferred from this to the Municipal Court, and that it was indispensibly necessary to have the prosecution instituted there. Upon conversation with Col. Austin was convinced that the Supreme Court had a right to exercise jurisdiction in the case, and then all intentions of prosecuting it at the Municipal Court were given up. It was the expectation of Mr. Webster, that some explanation would be made by Gen. Lyman, which should supersede the necessity of a public prosecution.

**JUDGE PARKER.** It is evident, there was throughout the whole, some unfortunate misapprehension between the parties.

*Mr. Davis* read the affidavit.

#### MR. HUBBARD FOR THE DEFENSE.

*Mr. Hubbard.* The intention must be proved, as well as the truth or falsehood of a charge, in a case of libel. Till lately it was ruled, that the truth of a libel could not be given in evidence. The statute giving this liberty, showed the progress of public opinion, as well as of legal principle. In former times it was thought the publication of the truth would as much tend to a breach of the peace, as a publication of a falsehood, and, therefore, even the truth was pro-

hibited—but now, the law protected a man in telling the truth, and more especially if it was from good motives or justifiable ends. In this case, it would not be attempted to prove the truth of the supposed libel—that Daniel Webster was a traitor, or that any one named in the communication of Mr. Adams was a traitor. He asked the jury to take the whole circumstances into view; he merely asked of them to carry into effect the principles of the law, allowing the truth to be given in evidence, and to judge of the motives of the supposed libellant, which, if they were innocent and without malice, did not make him a libeller, or, to use the words of the indictment, an infamous libeller. If his motives were pure and innocent, in the publication, he was by no means a malicious libeller—if he had no intentions of vilifying the prosecutor, he was guilty of no malice, yet malice was a principle ingredient of the crime. The motives were, therefore, to be called in question—on this subject he need not enlarge—it was a common sense view of the question. The circumstances of the case would show, beyond a reasonable doubt, that Gen. Lyman never intended to libel Mr. Webster—that purpose was never in his heart or head. The alleged libel was merely a comment of Gen. Lyman upon Mr. Adams' letter. This was done at the close of a warm political contest. The object of the writer was, to hold up, if any body, Mr. Adams to ridicule and contempt, for that letter, and not Mr. Webster; and to show that he never was worthy of support. He should not oppose the law as laid down by his brother, the Solicitor, in the present case. He should only contend from the nature of the piece itself, the character and views of the writer, and the circumstances of the case, that the defendant never intended, really, to libel Mr. Webster, and that of this fact the jury must be convinced beyond a reasonable doubt. It was a well known fact, that the first object of the *Jackson Republican* was to oppose the re-election of Mr. Adams, and to advocate the cause of General Jackson for the Presidency of the United States. Mr. Adams at the close of a hot political contest, publishes a certain letter,

bearing strongly upon the motives and conduct of certain leaders of the Federal party, which letter was in the case; after the publication of this letter, Gen. Lyman undertook to publish a commentary upon it, for the purpose of holding Mr. Adams up to the contempt of the Federal party, on account of the accusations contained in that letter, and to show from it that he was unworthy of their support. This letter went to show his (Mr. A.'s) real feelings toward the Federalists of former times. Gen. Lyman, not in set logical terms to be sure, endeavored, in his commentary upon that letter, to show what the Federal party ought to feel upon such an occasion, and that Mr. Adams was unworthy of their support.

These intentions on the part of Gen. Lyman, were to be gathered from the piece itself—if this appeared, the unavoidable inference must be, that there was no malice against Mr. Webster, on the part of Gen. Lyman, but merely an intent to hold up Mr. Adams, not Mr. Webster, to public ridicule. He had a right to do this. In judging of motives, for the motive must be malicious to constitute a libel, all the circumstances of the case, at the time of its publication, must be taken into consideration by the jury. Without this, innocence might be construed into guilt—a course contrary to common sense, or the true intent and meaning of the law of libel, even under its ancient, to say nothing of its modern construction.

It was a well known fact, that once the Federal party was the dominant one in the United States. It was no dishonor to any man to have belonged to it. Washington was at its head, for himself (Mr. Hubbard), he felt it no disgrace, to have been in its ranks. It was a fact, well known, for it was a matter of history, that John Quincy Adams, was, at one time, one of its members—one of its leaders. He was associated with those very men, whom, he had lately publicly denounced, in terms of common and political friendship—he afterwards disowned them, and apostatised from them; he had also publicly called them, towit, the leaders of the Federal party, traitors to their country in the embargo and war.

Mr. Lyman had in his commentary, said that Mr. Adams, on account of this strange charge, was unworthy of the Federal support, that they, of all others, had the least reasons to support him—this was a fair ground for a political writer to take, and such as was perfectly justifiable in order to promote the election of his own candidate, viz. General Jackson.

Why was it, that so much was said concerning the freedom of the press, if each member of the body politic, had not a right to canvass the characters, conduct and motives of each popular candidate and to develop the whole mass of facts pertinent to the issue? This especially ought to be so, when the motives are good, and the end justifiable. It is possible for a man, in such case, perhaps, to be indiscreet, but it does not follow, that he of necessity, must be guilty of malice, in spreading before the community such facts. When a person is to be chosen to the high office of Chief Magistrate of the United States, it must be expected that a full canvass of the merits of each candidate would be made; a commentary on such merits, or demerits, was not to be inferred as malicious, either towards the candidates themselves, or their supporters. The piece itself, was not an attack upon even Mr. Adams himself; but a commentary upon his own letter, giving it a construction correct and obvious to the eye of reason.

A letter from Mr. Jefferson had been read in the course of the trial, of the date of December, 1825, in answer to one from Mr. Giles; this document, as well as Mr. Adams' letter, had first appeared, toward the close of the last election; this probably was intended to operate to the advantage of Mr. Adams in Virginia. The intentions charged upon the Federal party, were to rid themselves of the effects or existence of the Embargo; it was said to be inferred, from the letter of Mr. Adams, that the Federalists of the Eastern States, would take any measures of resistance even unto blood if the embargo and its principles were to be continued in operation; of this, Mr. Adams had the most unequivocal evidence; also, that said leaders or party, were then in negotia-



tion with Great Britain to re-annex, etc., New England to Great Britain, and to take no further part in the war then going on. Mr. Adams' remarks upon Mr. Jefferson's letter tended to show that he had confounded events, and that he had applied to an opposition to the war, what the Federalists did in opposition to the Embargo; still, however, reasserting the fact that such intentions did exist on the part of the leading Federalists. In order to show that Mr. Webster was one of the leading Federalists of New England at the period referred to by Mr. Jefferson, Mr. Adams, or both, he would refer to a pamphlet, said to have been written by Mr. Webster, and by him acknowledged, on the Embargo Laws.

The *Solicitor General* objected to the reading of, or reference to a part, unless the whole was read.

*Mr. Hubbard.* The pamphlet was in the case and had been acknowledged by Mr. Webster, and he had a right to refer to it, to show that Mr. Webster's sentiments on that important topic were the same as those of the leading Federalists. He did not wish the whole read on account of a waste of time.

The *Solicitor General* objected to a reference to parts.

The JUDGE desired *Mr. Dexter* to read the whole pamphlet, which he did.

#### Are the Embargo Laws Constitutional.

The government of the United States is a delegated, limited government. Congress does not possess all the powers of legislation. The individual States were originally complete sovereignties. They were so many distinct nations rightfully possessing and exercising, each within its own jurisdiction, all the attributes of supreme power.

By the Constitution, they mutually agreed to form a general government, and to surrender a part of their powers, not the whole, into the hands of this government. Having, in the constitution described the form which they intended the new government should take, they, in the next place, declare precisely what powers they give it; and having thus cautiously described and defined the powers which they give to the general government, they then, for greater security, expressly declare that "the powers not delegated to the United States, by the constitution, are reserved to the States respectively, or to the people."

This is the plain theory of the national constitution. To deter-

mine, therefore, whether Congress have a constitutional right to lay an embargo, we must look at their charter. If the constitution gives them such a right, they have it; if the constitution does not give such a right, then they do not possess it.

It is clear that the power of laying an Embargo is not in so many express words given to Congress by the constitution.

If they possess such a power at all, they hold it under a clause in the 8th section of the first article which says that Congress shall have power

“To Regulate Commerce with Foreign Nations.”

It is admitted on all hands that no other article or section confers the power, and that if these words do not give it, then it is not given.

“To regulate commerce” is an expression not difficult to be understood. To regulate, is to direct, to adjust, to improve. The laws respecting duties, drawbacks, ports of entry, the registry, the sale, and the survey of vessels are all so many laws “regulating commerce.”

To regulate, one would think, could never mean to destroy. When we send our watches to be regulated, our intention is not that their motion be altogether stopped, but that it be corrected. We do not request the watchmaker to prevent them from going at all, but to cause them to go better.

If one were authorized to regulate the affairs of government, he would not think of arresting its course altogether—of abolishing all office and abrogating all law—this would be destroying; but he might, perhaps alter, and correct; and this would be regulating.

The embargo laid in the year 1794 under Washington’s administration, comports strictly with this definition of regulation.

It was limited to sixty days.

Its object was to give the merchant notice of his dangers, and having done this, to leave him to his own discretion.

It was intended for the benefit of commerce alone. It had no extraneous object.

When the merchant was apprised of his danger; when he had availed himself of all the knowledge which the government could communicate; when he had ascertained in what channels he might pursue his accustomed trade, and in what he might not; the embargo then expired, and our vessels once more sought their proper element.

The same motive which led government to lay the embargo, led it at the same time, unasked, unsolicited, to a full and perfect disclosure of all the information it possessed relative to our foreign regulations.

Thus by General Washington’s embargo of sixty days nothing was sought but the protection, the preservation, the regulation of commerce.

The present embargo is unlike that in many material points.

It is unlimited in point of time.

An unlimited suspension of commerce approaches as near to its destruction as the indefinite suspension of breath does to the destruction of animal life. In either case, relief may come soon enough to prevent the effect—but it may not. If it be conceded that Congress have not a constitutional right to annihilate commerce as one of the leading interests of the country, there seems to be an end of the argument; for no man doubts that a law laying an embargo for an indefinite time, must, if left to its own operation, produce the total annihilation of all the commerce of the country; because such a law never can expire. It is true, that the effect may be prevented by a second law, repealing the first; but how can the constitutionality of a law depend on a second law repealing it?

The present embargo differs from that of 1794 in object. It is not intended as a measure of precaution, to forewarn the merchant of his danger, and then leave him to his own discretion.

It is used as an instrument of war. Its avowed object is to reduce the powers of Europe to the necessity of complying with our terms. It is advocated, as a powerful means of annoying foreign nations.

This, it would seem, is not regulating commerce by an embargo; it is making war by an embargo. It is in effect, carrying on war at the expense of one class of the community.

It is difficult to understand, how an embargo, universal in extent, and unlimited in duration, imposed for the express purpose of waging war against foreign nations, and of compelling them to come to amicable terms, by a powerful assault on their interests—it is difficult to understand how such a measure is a mere regulation of commerce. It would certainly look more like its annihilation.

There is little hazard in saying that if the commercial States had thus understood the constitution, they never would have agreed to it. They never would have consented that Congress should have power to force them to relinquish the ocean, and to cut them off from one of their great pursuits.

It is impossible to believe that they understood such a power to be given to Congress under the authority of regulating commerce.

#### What were the True Causes of the Embargo?

The general embargo law was passed in consequence of the President's recommendation, communicated to Congress by message, December 18, 1807.

The only object which the President pretended to have in view, in recommending this measure, was "the keeping in safety our vessels, seamen and merchandise."

This was his only ostensible object.

It is easy to show that it could not have been his real one.

In the first place, the "safety of our vessels, seamen and mer-

chandise," did not require a perpetual embargo. If the President had embargoed our commerce for thirty, or sixty days, and immediately made public the information which the government possessed relative to our affairs abroad, instead of keeping all information locked up in the cabinet, the merchants could have decided for themselves, on the expediency of sending out vessels; and they are certainly the best judges of their own risks, and their own interest.

In the next place, the "safety of our vessels, seamen and merchandise" did not require an universal embargo.

All our commerce was not endangered, either by the French decrees, or the British orders of council. It has indeed been said by Mr. Nicholas, one of the members of Congress who voted for the embargo, and who is now laboring to rescue his reputation from the consequences of it, that if the embargo were off, "not a ship of ours could sail, which would not be subject to seizure and confiscation by one or other of the belligerents, unless she were going to the bare kingdom of Sweden."

This is either a gross mistake, or an intentional misrepresentation. We will here enumerate the places to which our vessels might sail, without being subject to seizure and confiscation, under the British orders, or French decrees, and we will add the amount of produce, foreign and domestic, annually exported from the United States to those places, according to official documents:

(Here a table was omitted in the reading.)

It will be clearly discovered that it is owing to the British orders in council not pursuing the French decrees in their injustice to the full extent, that our trade to the Spanish, French and Dutch colonies, is left without interruption, and amounts to six millions of our domestic, and upwards of fourteen millions of foreign produce.

On the 23d of November, a committee of merchants in London having desired an explanation of the orders in council of the 11th of that month, the following is the explanation given by order in council.

"American vessels may proceed from the ports of the United States to the ports of the colonies belonging to the enemy, and direct back to the ports of the United States."

If therefore the safety of our vessels, seamen and merchandise had been the President's real and only object in laying the embargo, he unquestionably would have exempted from its operation, all vessels bound to the foregoing places.

But there is yet another consideration which alone is complete demonstration, that the safety of our vessels, seamen and merchandise, was not the true cause of the embargo. When the mouth speaks one language, and the conduct another, we all know which we are to believe. When a man's pretensions are utterly inconsistent with his actions, his pretensions must be false.

If the safety of our ships and merchandise was the true cause of the embargo, why were the supplementary acts passed, prohibit-

ing all intercourse with Canada and New Brunswick? It surely could not endanger our vessels, or seamen, or merchandise, for a Vermont farmer to go into Canada and sell his pot-ash—or for a British subject to come over the line and buy it.

The moment the President put his hand to the supplementary law, he directly negatived the truth of his message. He made a complete admission, that his real motive in recommending the embargo was not such as the message represented.

A member of Congress has indeed gravely said, that trade with Canada and New Brunswick was prohibited, in order that "the sufferings of our citizens might be made equal!" What! If Congress think it necessary by an embargo, to distress one portion of the community, will they also, although it is not necessary, distress the rest, in order to make "the suffering equal?" This is as if your physician should draw one of your teeth, because it ached, and should then propose to draw another, from the other side of your face, which did not ache, in order to make the "suffering equal."

It is worse to bear the insult of such arguments, than to endure the pressure of such measures.

On the whole, it is demonstrated—it may be asserted in a tone that defies contradiction, that the motive assigned for laying the embargo, was never the true motive.

It is now said that the embargo was laid for the purpose of bringing France and England to just terms of settlement with us, by withholding our produce, and thereby starving the inhabitants of their colonies in the West Indies.

That the embargo was intended to operate as a measure of hostility against England, there is no doubt; but that it was intended to be equally hostile to England and France; or that the government expected from it a revocation of the British orders of council and the French decrees no man who will consider the subject can possibly believe.

Everybody knows, that in all rich and civilized countries, the quantity of food actually consumed is at least twenty times as great as the absolute necessity of life requires; and every reader of history has observed, that a single town, covered with a thick population, situated perhaps on a barren rock, has resisted for months and years every attempt to reduce it by famine. And yet the United States, by the mere operation of withholding their flour, expect to reduce the West India colonies to such a state of want and distress, that, to relieve them, England and France will be compelled to repeal their orders and decrees!

Many of the West India Islands have a fine, exuberant soil. A warm sun, rolling vertically over it, fructifies and stimulates it, to the production of two harvests in a year. They are, moreover, in the neighborhood of the rice countries on the Spanish Main, and everywhere accessible by sea. Will any man believe, for a moment, that Mr. Jefferson could be so wild and credulous, as to think of

starving these Islands? That they experience inconvenience from the loss of our trade is certain, because it is an interruption of their ordinary business; but they suffer no more than we do and probably not so much.

It would be a good deal ridiculous, if the merchants of Portsmouth should conspire to freeze the inhabitants of the county of Rockingham next winter, by refusing to sell them broadcloth and kerseymere. Every one would see, that few people would be likely to perish, in consequence of such an embargo. It might be a trifling inconvenience—because many of them have been accustomed to purchase those articles in that town. But if the mercantile gentry should take such airs, the farmers would laugh at them. They could purchase their articles elsewhere, or do without them.

It is just as ridiculous for the United States to think of starving the West India colonies.

We appeal to experience. What has been the fact? The embargo has now been imposed for more than seven months. Has it produced any effect? Has it starved anybody? Not at all. Do the Islanders grow clamorous? Do they rise in rebellion, and cut the throats of their governors for want of food? Not at all. Flour, especially in some of the Islands, is dear. But still they have flour. They suffer inconvenience; but they suffer it without impatience and without mortification, for it is not the consequence of their own folly. We speak of the Islanders; to them these consolations belong, while they can behold a people, who suffer severely in a foolish attempt to inflict distress on others.

In short, the administration papers are compelled to admit that the embargo has not produced such an effect on the West India colonies, as to induce the mother countries to any relaxation of their systems.

It is even admitted that it is not likely, by its further continuance, to produce any such consequences.

This is the language of the *National Intelligencer*. Why then is it continued? If it was laid to accomplish an object, which it has not accomplished, and which its advocates admit it never can accomplish, why is it not taken off? Why is this bondage continued when it has not only not produced the intended effect, but when it is admitted that it never can produce it?

These considerations show us conclusively that the government did not adopt the embargo system, from an expectation that it would compel England and France to rescind their orders and decrees. If they had, they would have abandoned the system, when they abandoned all hope of producing that effect by it.

What then was the real cause of the embargo? Until some new light is thrown on this subject, we shall be compelled to believe that the embargo originated in a wish in our government to favor France, and to take side with her in the war against Great Britain. Great Britain is a commercial country. She feels the embargo more than France. She does not, indeed, by any means, feel it as

severely, as it was expected she would; but still she feels it in her trade, to a considerable degree and Bonaparte, whose undivided object is to destroy her, and root her out from among the nations, willingly bears his portion of the inconvenience for the sake of seeing a greater portion borne by his enemy.

It is not material to consider whether this partiality for France arises from the fear or the love of her. That it exists is certain. The administration party are perpetually singing the praises of the French Emperor. They rejoice in his successes, and justify and applaud his most enormous acts of injustice and oppression. Even when he marched his army to Spain, overturned its government, traitorously dethroned its sovereign, and murdered one of its princes subjugated its provinces and placed a plundering and blood thirsty creature of his own on the throne of the last branch of the ill-fated house of Bourbon, they burst forth in exclamations of rapturous and unhallowed joy at the progress of successful guilt and violence. They even blasphemed Heaven and mocked it with diabolical gratitude, when they thanked God that the world was blessed with this detestable tyrant, and that society was like to regain its ancient peace and dignity under his iron sway.<sup>24</sup>

That Mr. Jefferson or Mr. Madison runs to this excess of adulation we do not assert. But we do assert that the newspapers under their most immediate patronage and inspection, clearly intimate that we are to have an English war. Nay, some of them openly avow it to be both their wish and their expectation. Even the *Intelligencer* is wound up to a high war note, and is obviously laboring to prepare the minds of the people for a British war. When we have a British war we of course have a French alliance, and surrender our liberties and independence to the protection of Bonaparte!

The embargo was laid for the same reason that at the instance of the French minister, we prohibited all intercourse with the independent government of St. Domingo.

For the same reason that we prohibit by law the importation of British commodities, while we do not prohibit the importation of French commodities.

For the same reason that we forbid British vessels of war to approach our shores, while we freely admit the French to the use of our waters, ports and harbors.

When a calculation is made on the effects of the embargo it is on its effects upon Great Britain.

Nobody inquires what effect it has produced on France. Every democratic newspaper on the continent treats the subject as if it respected Britain alone. "Do her colonies revolt? Are her manufacturers seditious? Is her government terrified? Does it relent, and relax its orders?" These are the standing inquiries while no one is at the trouble of asking, how it affects the emperor of

<sup>24</sup> See the *Boston Chronicle* and other democratic papers.

France. All this proves to us, if proof we wanted, that the embargo is exclusively an anti-British measure—tending to irritate that nation; to increase and aggravate the difficulties between its government and our own; and finally to provide for this devoted land the blessings of a British war, and a French alliance.

#### What Are Its Effects?

Abroad, it has produced, as was natural it should, still further irritation. It has widened the breach, and is bringing us every day nearer to open war. At home it has produced effects which every man beholds.

In a commercial point of view,

It has annihilated our trade.

In an agricultural point of view,

It has paralyzed industry. I have heard that the touch of Midas converted everything into gold; but the embargo law, like the head of Medusa, turns everything to stone. Our most fertile lands are reduced to sterility, so far as it respects our surplus produce.

As a measure of political economics,

It will drive (if continued) our seamen into foreign employ—and our fishermen to foreign Sand Banks.

In a financial point of view,

It has dried up our revenue, and if continued will close the sales of Western lands, and the payment of installments of past sales—for unless produce can be sold, payments cannot be made."

To this we add an extract from the letter of Mr. Lyon, one of the Democratic members of Congress, to his constituents.

(Letter omitted in the reading.)

This numeration of losses does not comprise the very great and severe one experienced by the ship owners, in the decay and destruction of their vessels; a loss which must have already amounted to more than twenty millions. The bounty of Providence hath this season, loaded our fields with a most extraordinary harvest, the surplus of which, beyond what the necessities of each family require, is to be added to the already enormous list of losses in consequence of the embargo.

Such is the embargo; such the doubts of its constitutionality; such its obvious causes; such its serious consequences.

*Mr. Hubbard* wished he could entertain the jury as well by his argument as they had been by the pamphlet they had just heard. *Mr. Jefferson's* letter to *Mr. Giles* contained in substance what was said to be the disclosures made by *Mr. Adams*. It was said that there was a confederacy among the Federalists, of the Eastern states, in relation to the embargo—that there was a negotiation on foot between them



and the British government to withdraw from the Union, and afterwards to take no participation in the war, which followed, but to remain neutral—that the country was in imminent danger from a convention proposed at New Haven, not Hartford, and that the designs of such convention were of the nature before named. The pressure of the embargo was so great upon the community that the Federalists had contemplated a civil war or a dissolution of the Union: for this reason Mr. Jefferson was obliged to abandon the embargo and substitute the act of non-intercourse. This was a part of the substance of Mr. Jefferson's letter, as repeated and quoted by Mr. Adams and backed by his, Mr. Adams' own letter. Mr. Adams, to correct some indistinctness which had occurred in the statement of Mr. Jefferson, arising from his great age and the natural decay of memory, had published in the *National Intelligencer* quotations from his, Mr. Jefferson's letter, with remarks of his own.

It was charged upon the Federalists of that period that they intended to resist the embargo, at all hazards, or to re-annex New England to Great Britain; against the democratic party it was charged that they intended to declare war and make an alliance with France. Mr. Adams had also stated that from a letter received from the Governor of Nova Scotia, by some leading Federalists in Massachusetts at the time alluded to, the design was apparent on the part of the New England Federalists to make New England a part of the colonies of Great Britain. This was said to be a confidential communication on the part of the Governor of Nova Scotia, and from this communication Mr. Adams and Mr. Jefferson drew inferences "which subsequent events had confirmed." The pamphlet which had been read was written in the summer of 1808, when public excitement was extreme, and the nature of it showed that the author was a distinguished writer and leader among the Federalists of New England. It was said by Mr. Adams that the people were openly instigated to oppose the administration of Mr. Jefferson and to violate the law of the embargo. How violate a law if it was

unconstitutional? and jury after jury had decided that it was so. No unconstitutional law could be violated, for the law itself was a violation of the constitution. The only way to test the constitutionality of a law was to break it and then try the fact of its soundness; if it was unauthorized it was binding on no one. The gentleman prosecuting was one of those very persons that reasoned upon the principles advocated in the pamphlet read.

The accusation of Mr. Adams tended to show that the Federal party, or its leaders, advocated measures which led to an open resistance to the law of the embargo. Mr. Webster was one among those intended to be included in the assertion, as was apparent from the pamphlet, known to have been written by him, and within the legitimate meaning of the statement of Mr. Adams. His opprobrious language extended still further; he said, that not only those who were leaders of the Federal party, but the judiciary, and those who had the management of the legislature, were also partners in the conspiracy to dissolve the Union, etc., and that a forcible resistance to the law of the embargo was contemplated; these were the inferences and conclusions of Mr. Adams; and beyond all that the judiciary were to bear them out in it! What further? If force was resorted to, to carry into effect the law, a civil war would be the result; and that this might be considered as a certain event. These leaders too, in co-operation with Great Britain! The whole of the Federal party of New England were in this plot; in the same cause. If this statement applied wholly to Massachusetts, why hold a convention at New Haven (not Hartford), close upon the borders of the great State of New York.

If the Federalists of Massachusetts alone were intended by the letters in the case, why should they have a meeting at New Haven; this fact alone was sufficient to show that the Federalists of New England were referred to generally and not those of Massachusetts only; they were all said to be in the same plot, and equally referred to by Mr. Adams; and of this he had "the most unequivocal evidence," though not

“proveable in a court of law.” This was a pretty round assertion and round assertions frequently left their makers a loop-hole for retreat. For instance, Mr. Adams had not stated the names of all these traitors, and their offenses were not proveable, etc. There was a chain of events referred to by Messrs. Adams and Jefferson from the embargo down to the close of the war which went to confirm (confirm what, forsooth?) why to confirm in their opinions, or in Mr. Adams’ the important fact that the Eastern Federalists were traitors, and had resisted an unconstitutional embargo! It would be seen from the letters<sup>21</sup> that the period embraced the whole period before named, and the whole of the Federal party; (he here read from the letters quoted extracts tending to show the soundness of this position.) In the expression made use of by Mr. Adams the words “subsequent events doubtless confirmed,” an intention existed in his mind to assert and which appeared in the letter quoted that the Federal leaders of New England meant to re-annex that portion of the country to Great Britain and “subsequent events,” to-wit, the Hartford convention, “doubtless confirmed it.” He did not stand there to vindicate the Hartford convention—the members of that body, or most of them, were now alive and could vindicate themselves and their motives if they needed vindication; neither did he wish to attack Mr. Adams. Mr. Adams had a right to his opinions, and when he came before the public with them, each individual had equally a right to comment on them. He undertook to say that the letter justified the comment, which was perfectly fair. It was the whole Federal party, of which Mr. Webster was a part, that were asspersed, and the defendant had a right, by way of comment, to make the application. He did do it, and barely explained the meaning of Mr. Adams: if in using the name of Daniel Webster, or if Mr. Adams meant to confine these treasonable plots to Massachusetts alone, then his, the defendant’s mention of Daniel Webster, as a leader among the Federalists of that period in New England, was a mistake, and not a mali-

<sup>21</sup> See *ante*, pp. 346-350

cious and infamous libel. He did not (the defendant) in his comments mean to libel any gentleman; much less his personal and former political friends.

In the same paper in which the libel was complained of, there was a pamphlet republished, signed by a writer calling himself a Pennsylvanian: the comments by that writer related to the same facts in controversy; in the alleged libel there was only a coincidence of opinion, drawn from the same letter of Mr. Adams. Mr. Adams, in his statement, as connected with the other letters in the case, had made a direct charge of treason against certain individuals, or a body of individuals, in the United States, and at the same time had stated that "he had no favors to ask from Mr. Jefferson," and that he did not wish any office. The Pennsylvanian and General Lyman had entertained and expressed similar views upon this state of facts, and there was a coincidence of views on the question. Now Mr. Adams, from whatever motives, it was of little consequence then to consider, had seen fit to make this attack upon the leading New England Federalists of 1808, and from thence down to the close of the war: those motives were his own, be they what they might have been—it was not for him (Mr. Hubbard) to state them. Mr. Adams had connected all these events and the intentions of the Federal party together, down to 1815; and in broad, bold, and unequivocal language, asserts that they had a treasonable purpose in view. On this bold accusation General Lyman, as well as the "Pennsylvanian," make their comments. Upon the assertions of the President, relating to the state of parties twenty years since, which were made to aid his own reelection, were not that party, thus accused, to make their comments? When the leaders of the Federal party, accused of having been actors in this tragedy, or he might rather say farce, were in question upon such grave accusation, could they not comment? or could not an individual of another party comment upon such accusation? Such comments as were made went to show to the Federalists of the Jackson or even Adams party, that they of all others should not support Mr.

Adams, their accuser, for the Presidency. It was especially correct that these accusations should be noticed here—the very spot at which some of the principal actors lived—here it was that an effect was to be produced—the inferences were drawn from the reading of public documents, and if, in the designation of the names obviously intended, Mr. Webster was not included in the intention of Mr. Adams, still, upon the worst construction, it was no more than a mistake without malice to say that Mr. Webster was a leading Federalist in Massachusetts, rather than in New England.

He then called the attention of the jury to the intention of the writer of the paragraph. It bore evident marks of haste—it was literally scratched off in a hurry—written on the spur of the occasion—it said that on account of these accusations of Mr. Adams he was unworthy of Federal support—it contained no libel upon Mr. Webster—there was no intent to lessen him in the estimation of the public—it merely intended to give a direction to the true meaning of Mr. Adams, and from this to show that Mr. Adams was not worthy of the support of that party, whose leaders he had denounced in such an unequivocal manner. Here was no intention to degrade any gentleman, least of all Mr. Webster. If Mr. Adams made broad assertions, he must calculate that their consequences would be followed out by others. In pursuing these consequences Mr. Webster's name had been used. From those remarks, one of two things must be true; either that Mr. Adams had disregarded the rights and opinions of a certain portion of the public, in order to further his own interests, on which account he was unfit for a re-election, or that, if he believed his own statements in consequence of having received traitors, as he called them, of the Federal party to his counsels, why then he was unworthy of support—in either case he was wrong. It was not for him (Mr. Hubbard) to decide upon the alternatives, or whether the writer of the article was not justifiable in taking advantage of Mr. Adams' dilemma; still, however, he did think, that if the writer believed that Mr. Adams intended what the plain import of his words

meant, he had a right to follow out Mr. Adams' reasoning into its legitimate consequences, and draw his own fair conclusions from its effects.

His client was well known and it was equally known that, previous to the election of Mr. Adams to the office of President, he was opposed to his election, and in favor of Mr. Crawford; the motives inducing him to take such opposition were perfectly honorable to himself; after the election of Mr. Adams, and when Federalists supported Mr. Adams, he seceded from their party and became the advocate of the cause of Gen. Jackson. The Federalists, generally, were in favor of Mr. Adams. Gen. Lyman saw fit to advocate the cause of Jackson; whether he was wise or not remained to be proved, it was of no consequence in this trial. The gentlemen named in the supposed libel, were formerly his political friends—they were at the time when the indictment alleged the libel, his personal friends—they belonged to the same club—met week after week together. In the Presidential contest, there might be an honest difference of opinion among Federalists, which would not naturally lead to dissension. Was it possible to conceive that he intended to libel his former political, and then personal friends? The idea was a monstrous one—the piece itself, he contended, bore a compliment on its very face; no man in his senses could believe that such were his intentions, and yet from the intention of the writer, must the malice be inferred. It was possible that an inadvertence, as to names, might have been committed, but there was no malice. No one, with a fair mind, could doubt of Gen. Lyman's intention, in classing Mr. Webster with those eminent gentlemen with whom he was thus associated.

But, with regard to the piece itself: Jefferson and Adams had written certain letters, concerning the restrictive system and the measures adopted by the New England Federalists, during the embargo and war. These letters related to the whole of the restrictive system, and to all the leaders of the New England Federal party. These views, thus expressed,

were confirmed by "subsequent events." These letters being before him, the defendant, he called the attention of his readers to them, and especially to the meaning of Mr. Adams in his letter, and says that A. B. and C. were the persons intended or named in the letter. If the question had been asked, "Who were the leaders of the Federal party?" the answer would have been as Gen. Lyman had given—the leaders were well known—they were eminent, distinguished men. Could not any one who was living at that period point them out? Were they not as well known before they were named by Gen. Lyman as now, since their names were written at full length? Was it offensive to either of those individuals to call them leaders of that party? What was the language used by Gen. Lyman? That Mr. Adams had said, that Harrison G. Otis and others were guilty of a plot to dismember the Union, during the embargo and war. What does Mr. Adams say? Why, that the leaders of the Federal party in New England, were engaged in the plot, etc. Who were those leaders? Any one could reply in the words of Gen. Lyman, that the individuals by him named were leaders. He had only called the attention of the reader to those who were intended by Mr. Adams.

He was merely commenting upon the absurd and ridiculous charge of Mr. Adams. It might be said, that there was an indelicacy in using names; but that idea had long since passed away. In a country like this, where there were thousands of presses, with their thousand tongues, it was idle to talk about delicacy in relation to public men. Every one that sets himself up for office, or whom the public set up for office; he who courts the public or who is courted by them, must calculate, not only to have his name but his character handled. It was well that it should be so—the more the character of a public candidate is sifted, the better for the community, and the better would be our rulers. If in this case there was any libel, it was in the indictment itself, and upon Gen. Lyman, for it called him an "infamous libeller." If Mr. Adams said that the leading Federalists of New Eng-

land were traitors, had not any member of the community a right to say who were leaders or traitors? When the most eminent men and greatest characters among us were thus traduced, had not the community a right to know the fact, and also to be informed who these men were? Had not an individual a right to ask of that community, whether the public would support this traducer for the first office in the gift of the people? Again, who would not say that Mr. Webster was not a leader at the period mentioned? Who would not say that he was a Federalist at that period? He, himself, would be the last one to deny it. Was he not a Federalist only, but a leader? Yes, and a powerful one. Who were the other leaders? Such men as Otis, Prescott, Dexter and others named by the alleged libel. Men of the highest order of talents and integrity; they stood upon the records of our country as such; most of them high in office. Mr. Adams undertakes to say further, that the judiciary of this State were concerned in the same plot. That such men as Judge Parsons, whose name will exist as long as law itself exists—that the present Chief Justice—that the late and revered Sewall, all and each were among the rebels. And was it now to be said, that when the judiciary were referred to, the names of the judges were not to be given? But did any of these consider themselves to be libelled by what Gen. Lyman had written—did Messrs. Otis and others feel themselves aggrieved by the alleged libel? When individuals had thus been libelled, as they were indirectly by the letter of Mr. Adams, Gen. Lyman or any other man, has a right to say what men were intended in the letter in question. He has a right to ask of the Federal public, whether they will support a man who has so foully calumniated their leaders.

Mr. Adams meant somebody. It has been said that corporations have no souls; perhaps the Federal party as such, or as a body, were in the same predicament—yet its leaders had souls, among whom was to be included Mr. Webster. If he was no leader at the period spoken of, then Gen. Lyman was guilty of a mistake, not of malice, in including him with



the others mentioned. Was he or was he not a leader? Any man who could write, and did write such a pamphlet as that in the case, must have been a leader. The fact of the pamphlet itself, its intrinsic energy and merit shows him to have been a leader. One who under any and all circumstances, would have been a leader. But it has been said that Mr. Adams had confined his views to Massachusetts, and he was speaking of the leading Federalists of Massachusetts—be it so, still that Mr. Webster was on the other side of the line, in New Hampshire, the author of the pamphlet in question, does not make the enumeration of him among the rest, by Gen. Lyman, a malicious and infamous libel. It was but a mistake, with no design of malice against Mr. Webster or anybody else. Mr. Adams in stating that he had the most “unequivocal evidence of a design on the part of the leaders of the Federal party to dissolve the Union,” was the only one guilty of a libel. The pointing out of the individuals alluded to by Mr. Adams, which was accomplished by General Lyman was only descriptive of the meaning of Mr. Adams, done without any malicious intent towards Mr. Webster and the others. On the part of Mr. Adams, and not Gen. Lyman, it was said that he, Mr. Adams, still believed in the existence of that terrible plot. This was fairly to be inferred from the letter of Mr. Adams. The republication of Mr. Adams’ letter, with the comments, was but a repetition of the charge of Mr. Adams, which was perfectly warranted by the piece. That stated, that a letter had been received from the Governor of Nova Scotia, concerning the plot—that all the Federal measures coincided with the existence of such a plot; and that “subsequent events” confirmed the truth of Mr. Adams’ statement. To show this to have been the opinion of Mr. Adams at the time of his writing the letter, no musty archives of the records of our country need be ransacked. He had himself published it to the world. The writer of the alleged libel had a right to feel indignant on the occasion and to comment with severity upon such a charge. Another party thought perhaps with Mr. Adams. But there was no

question before that jury concerning the merit of parties; whether Monroe, Madison, Jefferson, or Adams, were right—but whether one, thinking as the writer did, at the time of his commentary, was justifiable in his course. For himself, he thought he was. Was it right for Gen. Lyman to declare the true meaning of what had been said by Mr. Adams? Did it make the article in question any more or less of a libel, that Mr. Webster's name had been used? Was Mr. Adams right in point of fact, that the leading Federalists of New England intended to resist the embargo, and re-annex themselves to Britain? On this point, Mr. Adams' opinion was one thing—what the Federalists actually did, another. The general accusations on the one part of joining the British, and on the other, of subserviency to France were mere accusations, and both equally incapable of proof. It was, however, admitted on the part of government, that Mr. Webster was one of the leaders of the party at that time, viz. in 1808. Was he not one of the leaders of the New England Federal party? If talents, personal influence, and an opposition to the restrictive system of that period, constituted a leader, Mr. Webster was not only a leader but a powerful one. He was of the same class as Messrs. Otis, Parsons, Cabot, Dexter, Ames and others; some of whom had left this sublunary scene of things for a higher and a better. He was engaged in the same cause and principles. If the names of the Federal leaders of that period were to be called, who would think of omitting the name of Webster? It was a fair matter of inference from Mr. Adams' letter; and there could be no question that Mr. Adams did mean Mr. Webster as much as any of the others, he (Mr. Hubbard) had named. But then it was said that Mr. Adams intended to confine his remarks to Massachusetts only. He should doubt whether such was his intention—even if it was, however, the including of one gentleman not strictly an inhabitant of Massachusetts, was but a mere mistake. Still Mr. Adams had included the measures and time when Mr. Webster was a distinguished leader.

The alleged libel then goes on to inquire, "why Mr. Adams'

statement has been withheld from the public eye more than a year? Why it has been published only one fortnight before the election for President all over the country? Why for three years he has held to his bosom, as a political counsellor, Daniel Webster, a man whom he called, in his midnight denunciation, a traitor, in 1808? Why in 1826 he paid a public compliment to Josiah Quincy in Faneuil Hall, whom he called a traitor the same year? And as the last question, why, during the visits he has made to Boston, he always met in friendly and intimate and social terms all the gentlemen whose names a few years before, he placed upon a secret record in the archives of our government as traitors to their country? Why did he eat their salt, break their bread and drink their wine." The true meaning of "midnight denunciation" was merely a figurative expression intending to say no more than that Mr. Adams had made a secret communication to Jefferson. It was a figure of rhetoric. It did not mean to say, that there was a secret book, a black book kept at Washington, in which the names of Otis, Webster, etc., were inscribed by Mr. Adams. Such expressions were mere intensives, and in common cases were added to give strength to an idea. And the whole was intended only as a comment upon Mr. Adams' letter. The whole shows it to be but a comment, and the reasons why these names were used were because they were leaders at that time. Was it a libel to call a man a leader or to accuse him of living in Massachusetts? If it was an offense, Mr. Webster has committed both the acts of which he is accused, by removing into Massachusetts and becoming a leader.

It was said that the libel was false. If they were not leaders, then the charge was false. If, on the contrary, they were, there was no falsity about it. Was he not a leader in 1808, in Massachusetts? He certainly was in New England. But here were other gentlemen, who also equally were libelled if Mr. Webster was libelled. If it was a libel on one it was also upon all. Messrs. Otis, Dexter, Prescott, etc., all were included. Who among them thought themselves libelled by

the publication? Do they deny the fact that they opposed the embargo? that they were influential men? Or do they avow it and justify their motives. In political contests, the parties must frequently resort to a publication of names, however indelicate it may seem to those, whose names are used. It was a thing to be expected by those who took a part in the contest of the day. It was every day's practice. If Gen. Lyman had not a malicious intent to libel the whole, then he did not intend to libel Mr. Webster. The whole are equally included.

He had as high an opinion of the character of Mr. Webster as had the Solicitor, but it was not for him (Mr. Hubbard) to stand there at that time to sound Mr. Webster's praise. He should leave that to the Solicitor, who has said that this was emphatically the prosecution of the Commonwealth, whose duty it was to protect the character of its citizens. He would ask of him where was the kind care of government, when her best citizens, her mighty living and mighty dead were traduced and vilified by Mr. Adams? When such men as Otis, Ames, Dexter and a long list of living and departed patriots were branded with the name of traitors, and they and their children left without a remedy. Did Gen. Lyman intend that paragraph on which this suit was founded as a malicious libel on these men? Did the Solicitor think so when he first read it? If it was so apparently a malicious and infamous libel, how could his friend, associated with him in this defense (Mr. Dexter) sit there to protect Gen. Lyman who had infamously libelled his deceased, lamented and respected father, and his honored father-in-law? No one in his senses could say, that it would be possible for him to do it. Did Mr. Otis, or any of the other gentlemen, complain of this charge of Mr. Adams, or feel aggrieved at the comments of Gen. Lyman? Certainly not. The prosecution originated in a mistake, an undoubted mistake. No explanation was made by Gen. Lyman or called for by Mr. Webster; no opportunity given to explain. The slightest explanation would have stopped any intended prosecution. The piece it-

self was no libel; and we produce the affidavit of Gen. Lyman to show that he had no intention of libelling the parties mentioned. There was no malicious intent on the part of Gen. Lyman. He might deny that there was an intention on the part of Mr. Adams to impute to any one a crime. Then if the original was innocent, the comment was so. In this point he had great confidence. The comment must be taken with the original, and must be limited and restrained by the circumstances attending it. For instance, if one should say of another he was a murderer because he stole a horse—this was no libel, for it was to be construed together and its absurdity would make it innocent. A resistance to the embargo was not treasonable, if the embargo was unconstitutional. It is not treasonable to oppose an unconstitutional law. Mr. Adams then in saying that the Federal leaders were traitors for opposing the embargo, did not say anything libellous, or call any one a traitor. What is treason? It was defined by the constitution to be levying war against the United States, or adhering to, or comforting the enemy. These were the only two methods of committing treason. Mr. Adams accuses no one of either. An intention to commit treason was not a commission of treason. An intention of this kind was not punishable by law; therefore it was no libel to accuse one of such an intention. A confederation of the New England States to confer with each other on the subject of dissolving the Union was no treason. The several States were independent and not dependent. Every State has a right to secede from the Union without committing treason. It has been openly talked of by a number of the States at different times, and of late by the legislature of South Carolina. The wisdom or policy of the thing was one thing; the right another. Here it was stated that certain gentlemen were traitors for threatening to dissolve the Union. The bane and antidote both went together. The time would undoubtedly arrive when this subject of a dissolution of the Union will be openly discussed in all parts of the United States. If there should ever be danger of a separation by violence, the

wisest and most patriotic course would be to deliberate calmly on this subject. A very honest and conscientious citizen might think he was discharging one of the most important duties to his country by presenting his views on such a subject. No one would call this treason. To prevent civil war and bloodshed is not treason. Still, if such discussion took place at an improper time, the wisdom and policy of the course might well be doubted.

On the whole matter, it was to be said that Mr. Adams on the eve of an election saw fit to publish a letter bearing on that election, he being one of the candidates before the people. In this he accused the leaders of the Federal party, etc., as before stated. Gen. Lyman publishes that letter and another referred to, and hastily makes some comments upon it, and states who those leaders were by name. Now if it was not a libel before the names were given was it any more of a libel now? Certainly not. The picture is only filled up. The whole of Gen. Lyman's remarks were but an expression of his own opinions upon the letter of Mr. Adams.

The files of the *Jackson Republican* were before the jury, with his pieces marked—they were open to their inspection and to the world. There was nothing in them derogatory to any gentleman—they were gentlemanly and respectful, as they ought to be, toward all, and reflected a high credit upon the editor and proprietors. In cases of this kind, it was always ruleable to take into consideration the character and standing the party accused of libel—was he a common, scurrilous, infamous libeller? Or was he an honorable and an upright man? An honorable man in one moment could not change his whole character, and become disgraceful in the eyes of the community; nor, on the contrary, an infamous libeller at once become an honorable man. He had seen a newspaper, he would not call it by name, but it was one of the oldest of our papers, and needed not his praise, and whose veteran editor had been but little accustomed to entertain malice. Still that paper had been found to have contained fifty-two libels in a short space of time. The discovery was

made by a very ingenious hunter after libels. The investigation was conducted by an order of the State Government, and applied to all the papers—the discovery was made by the State's Attorney. Yet no one would accuse that editor of malice, but he might have been indiscreet. So with Gen. Lyman in the present case—he intended no disrespect to the gentlemen named in the alleged libel then—he intended none now; neither did his counsel.

It was rather a compliment to these gentlemen, than otherwise, to call them distinguished leaders in those times. Gen. Lyman was entirely misrepresented, if it was said, that he intended to traduce them. It seems that the feelings of Mr. Webster were hurt, and there was a question of etiquette, who should make the first advance. One waited for an explanation to be asked, the other for a reparation to be made. It was immediately understood by Gen. Lyman that a prosecution was to be commenced by Mr. Webster; then followed a lawyer's letter to the publishers of the *Jackson Republican* to which the reply was made in the case; a long indictment aggravating the nature of the offense ensued, and the first suit, which ever had been instituted against the defendant, was made; his feelings were hurt. On the part of Mr. Webster, he was surprised that Gen. Lyman should have written the alleged libel; he expected an explanation, which not having been tendered, he became angry; even the greatest men, were not always free from this passion; it had often happened before with human nature, and often would again. Gen. Lyman was not informed of the name of the author of the inquiry; the breach became widened; no explanation could be expected under a threat of prosecution; much less after an indictment.

After the indictment was found, no honorable man could consent to make the explanation required in this manner. Mirabeau had said that words were things. It was no small accusation against a man, to say of him, that he had been guilty of an infamous libel; while such a charge and prosecution was hanging over him, the defendant could not honor-

ably seek out an explanation, but preferred to meet the charge here; at the hands of a jury of his country; he here says that he is not guilty of an infamous libel, and that in the paragraph complained of, he was not guilty of a malicious intent and claims your acquittal.

The Solicitor General has observed that if this had been a calumny of an ordinary kind, no notice would have been taken of it. On account of its aggravated nature, the attention of the government had been attracted to it. We have, also, heard it intimated in another quarter, that the business was pursued because it was found to attach to a responsible person. The situation of the defendant might have had an effect, have exercised an influence on the mind of the individual at whose instance the indictment was procured. Of this, he did not pretend to complain. He did not now examine into the motives of the prosecution, neither could the jury do it. The defendant, from his situation, has been enabled to devote his leisure to study; he has looked into the science of government; he has written much on political subjects. In free countries, such inquiries and pursuits cannot be considered without value. A man who gives his time and leisure to them should not be discouraged. On the contrary, he should be sustained. If he falls into errors, if he is guilty of inadvertencies, he should not be treated with a greater degree of severity. If the taste of a person disposed him, or his situation in life enabled him to devote himself to politics and to those matters in which the public were especially concerned, it was not wise nor judicious in the public to frown upon him. On the contrary, it was both wise and judicious to give him their countenance, and take him by the hand. But the circumstances of the individual were not to be considered in this case. The jury had only to look at the alleged offense, at the law and the fact. The situation of the defendant might have had an influence on the prosecuting officer, but it could have none on the minds of the jury.

It was averred in the indictment that Mr. Webster, a Senator of the United States was libelled. Gen. Lyman did not,



however, say anything of him as a Senator of the United States, but merely as a leader of the Federal party in 1808, when he was not a Senator; that he is now a Senator was not a subject of their consideration at the present trial. All alike were to be protected, and the defendant's reputation was in their hands; there was but little disagreement about the law; the only fact in issue was the intention of Gen. Lyman at the time he wrote the alleged libel; that fact of the innocence or guilt of those intentions was for their decision, and he confidently expected an acquittal.

The *Solicitor General* said that from the lateness of the hour, and from the fatigues of the day, it would scarcely be in his power to do justice at that time to the government by attempting to close on the part of the prosecution.

*Mr. Dexter* deprecated the course of postponement, as the arguments used by the defendant would not be likely to be so distinctly remembered by the jury in the morning as now. They might lose their force.

JUDGE PARKER said it was an unfortunate point to break the cause off here; but the defendant's counsel could recapitulate their chief points in this case if they pleased in the morning.

MR. DAVIS FOR THE COMMONWEALTH.

*December 17.*

*Mr. Davis* said the object before the jury was one perfectly plain; it was a hill in view, and the plain free from underbrush or bushes. It could not create much difficulty when the vista was seen, to judge of the character of the whole prosecution, and the motives of the prosecutor. On this head it had been insinuated that he was influenced by party views; no such thought had ever entered into his head.

If there was any place under the canopy of heaven, in which jurors should be impartial, when they should be aware, to use a well known expression from an equally well known book, that "they should put off their shoes, for the ground on which they stood was holy," it was on this occasion. He should endeavor in this case to give what was commonly called a bird's eye view of the case before them. The facts were few and simple; he should therefore be brief in his ex-

position of, and comment upon them. In the first place he should conceive it necessary to answer some few remarks on the part of the closing counsel. The accusation against Mr. Webster was, for the commission of one of the highest crimes known in our laws. The general answer was no more or less than an admission of the fact of such accusation. This was against a man of no less consideration than a Senator of the United States. The first point taken by the defendant's counsel was that there was "no intent on his part to injure Mr. Webster;" and the second was, that the "writing was scratched off in the hurry of the occasion;" that there were no malicious motives; and in the third place, this was only a fair comment upon the statement of Mr. Adams; that what he, the defendant, had said, was but a fair inference from the letter of Mr. Adams. Still further, that he could not have intended to libel Mr. Webster, for he had placed him upon the list of his (General Lyman's) friends. From a careful review of the whole subject, it would be found that this was a fair digest of the whole defense, and everything of the least importance in that defense was contained in it. It was his duty carefully to comment upon this state of facts, and he now felt most peculiarly his present official responsibility. He had a high respect for both parties, in both their public and private situations.

Previous to going into the ground of the present prosecution, he could not refrain from replying also to some remarks, which had fallen from the lips of the counsel of the defendant, which seemed particularly to have been aimed at himself, in his official capacity. It was said that the language of the libel was unusually unnecessary; that the use of the word infamous, exhibited an excited feeling, on the part of himself, as the prosecutor for the government. To this he could only reply that it was the language of the law, and not his own. It was not fabricated by him for the occasion, but as the language of those precedents, which were the rule and guide of officers of government in such cases; it was drawn in technical language without which, it could not be

sustained, and the omission of such language would have been fatal. He should be the last to use unnecessary terms of hostility toward the defendant in this case. The indictment sets forth, that the language used by the defendant was false, scandalous, malicious and infamous. Malice was an essential ingredient in libel, without which, it could not exist; it must be false also; and the present indictment was framed from a precedent of one, in a case where Lord Mansfield was libelled, and he thought the defendant in this case should not complain of a lack of delicacy, on the part of the prosecuting officer, for copying that precedent in this instance of Mr. Webster's case, in every way Lord Mansfield's equal.

In reply to a remark of the senior counsel that political libels should be viewed with more leniency than other libels, because political information was necessary to be circulated for the public benefit, and such knowledge was a right of the people, and that the people would look with jealousy upon any infringement of that right, he could answer, that political information was one thing—political libels another. A libel charged a defendant with falsely and maliciously accusing a man of crime, and dragging him before the public by name, thus falsely and holding him up to public contempt. In discussing the characters of public men, he knew of no course more to be reprobated than that of false accusations, whereby, by calumny, the public were to be deceived. If such calumnies were not to be repressed, what security for his fair reputation could a good man obtain, when he was presented as a candidate for the offices of the people? What just and honorable man would consent to allow himself to be held up for such offices? The idea should not be sustained for a moment that political libels were to be treated with greater leniency than other libels—the mischief caused by them was greater, and the guards against them should be stronger. He knew of no kind of libel more strongly to be reprobated than those against public men, or candidates for public office.

He should now proceed to state his views of the case, and thus far his only object which was important was to clear the grounds from obstruction, so that a clear view might be given of the question at issue. Of that issue he had no doubt. It was in evidence that the foundation of the libellous matter was contained in the *National Intelligencer*, and that the alleged libel was only a comment on the letter referred to in that paper. However this letter might apply to others, he contended that it had no reference to Daniel Webster. It related to the leading Federalists of Massachusetts, and not to Mr. Webster, who then resided in New Hampshire; he could say, with the most perfect distinctness, that the libel so far as it related to Mr. Webster, originated entirely with Gen. Lyman, and not with Mr. Adams. In the original letter there was not the slightest allusion to Mr. Webster. If in describing this libel he could legally have done it in the indictment he would have called this libel by a softer name—he would have said that the observations of Gen. Lyman relative to Mr. Webster were unfair, unfriendly, unhappy, unchristian, and he might have also said, ungentlemanly; in fact he was puzzled for a name to give to the nature of these observations—it was not his wish, but the law itself, that designated the terms to be used. He was himself satisfied that Mr. Adams intended to have extended his observations to the leading Federalists of Massachusetts, and not to Mr. Webster. Mr. Webster was then placed upon a different ground from any other leading Federalist then in the New England States. He was then a young lawyer in New Hampshire struggling for his bread.

He was by no means a leader of the Federal party in Massachusetts, at that period, for he was not an inhabitant of it. It was particularly said by the counsel for the defendant, that the letter of Mr. Adams applied to all of the Federalists of New England, and that Mr. Jefferson's letter applied to the whole of the Federalists of the Eastern states. Yet, still it would be remembered that Mr. Jefferson himself had stated that "he" (Jefferson) "understood that he" (Adams)

"named Massachusetts." There was no ambiguity in the statements of Mr. Adams or Mr. Jefferson—they in no case directly or indirectly, referred to Mr. Webster. The whole intended on their part was that there was "a negotiation, susceptible of unequivocal proof," that the Federalists of Massachusetts intended to dissolve the Union, and re-annex it to Great Britain." This at that, and at no other time, could have reference to Mr. Webster. It was, on the part of both Adams and Jefferson, directed at the Federal rebels of Massachusetts, and by no means, at Mr. Webster. To prove these facts, he cited from the letters of Mr. Adams and Mr. Jefferson in the case. The letter from Nova Scotia referred to by Mr. Adams, as received by some person in Massachusetts, went to show that he intended by his sweeping denunciation, the Federalists of Massachusetts only. There was the same difference between charging the leading Federalists of Massachusetts at that period with treason, and charging Daniel Webster with treason, as there was between black and white.

At the session of Congress, November, 1808, Mr. Adams was a private citizen resident in Boston while the embargo was in force. It pressed severely upon the private property of many individuals and upon the commerce of the New England states. There was a severe opposition to the restrictive system. Mr. Adams in speaking of the opposition to the measures of the embargo, intended to apply these to the Federalists of Massachusetts of the state in which he lived. He speaks of the men and measures of the leading Federalists of that state, in which he lived. In that, jury after jury had said, that the measure of the embargo was unconstitutional. It was also asserted in the calumny of Mr. Adams that the judiciary of Massachusetts were in league with the opposition to the embargo, and in this treasonable plot. The whole related to the legislature, the judiciary, and to the leading Federalists of Massachusetts: and not to that of any other state. It was of this state it was said, that their resistance to the embargo would produce a civil war. In all cases

Mr. Webster was excluded from the charges contained in the libel of Mr. Adams. From these facts it could not be otherwise but that Mr. Webster stood upon his own solitary ground of integrity, and apart from the foul slanders attempted to be affixed upon him by Mr. Adams or any body else. Mr. Adams must be the judge of his own intentions and conclusions of their correctness or untruth as to the Federal party. They touched not Mr. Webster.

Another remark of the defendant's counsel was that the statement of Mr. Adams contained nothing very important. One would imagine that from this there was nothing very atrocious in it; and that the present alleged libel was but a very innocent comment upon it. And that an union of Massachusetts and Great Britain, under such circumstances of the nature referred to, might be perfectly harmless, and therefore there was no malice to be presumed or implied in the statement complained of. But it was important to glance at the statement of Mr. Adams in order to understand the nature of the comment by Gen. Lyman. The statement of Mr. Adams was that the embargo would be met with a forcible resistance on the part of the Federalists of Massachusetts and New England. What was the meaning of this? Why, that a law of the United States would be forcibly resisted, and that there would be another "Whiskey Insurrection!" or a rebellion in which every individual concerned could be convicted of treason.<sup>25</sup> In the whiskey rebellion some concerned had been convicted of treason. That resistance was considered to have been treasonable; it was a treasonable combination against the sovereignty of the nation. The Federalists of the period alluded to by Mr. Adams were willing to meet this charge on the ground of its truth. It was also said by him that the legislature and judiciary of this state were subservient to this policy or plot; that they were preparing to produce a civil war, and if they were involved in the plot, they were also in the treason. And yet it was said that a charge of this nature possessed but little of atrocity!

<sup>25</sup> See 11 Am. St. Tr.

When such charges were made it exhibited every abandonment of principle,—of unutterable depravity; it was an infamous falsehood. The highest and most venerated characters were traduced. The most high minded of this, or any other country, were vilified. The counsellors and bosom friends of the immortal Washington were foully caluminated; those whom he trusted and loved were thus disgraced. He should not under these circumstances be mealy mouthed. And what were these New England or Massachusetts rebels to have done? to have thrown themselves into the arms of a foreign government: and what government? Why of Great Britain—of that country from which they had but scarcely for a day been emancipated! that country which had shed the best blood of the fathers and brothers of the accused! it had been charged that it was intended by them to call in the aid of foreign mercenaries, of foreign cannon, to accomplish this wicked design. This was the greatest act of human depravity, of which any man could be accused. This was made against not only the living but those who had gone to their long account; against the good and the patriotic and the pious; against such men as Ames, Cabot, and Dexter. This being the true character and import of Mr. Adams' statement on which the alleged libel was founded was there any reason for the allegation that Mr. Adams' charge was trifling in its nature, and that the defendant had a right to come out with the names intended as large as life? The character of the State was implicated in the attack thus made; and if any men ever existed whose characters were above reproach, they were those thus accused by Mr. Adams, and afterwards by Gen. Lyman, in the libel complained of: the accusations against the leaders of the Federal party of 1808, and especially against Mr. Webster, were false—yes ludicrously false. The Federalists of New England were, to be sure, not much injured by the accusation as was stated by the defendant's counsel; perhaps some of them did not think that the charge was worthy of notice.—But that they did not see fit to notice it was immaterial in the present case; had he been one of the

persons named he should not have hesitated in his course. Gen. Lyman in his communication most explicitly states that Mr. Webster was recorded on the archives of the government as a traitor. No construction which had been given by the defendant's counsel had charged that allegation of Gen. Lyman or its nature.

A pamphlet had been written by Mr. Webster in New Hampshire during the embargo, which was produced by the counsel for Gen. Lyman as evidence in the case. To this he (the Solicitor) had objected because he had never seen or heard of the pamphlet; he did not know what Mr. Webster might have written in the ardour of youth, as he had not seen it. He presumed that it was introduced for the purpose of proving the truth of the allegation stated by Messrs. Adams and Gen. Lyman.

*Mr. Hubbard* denied the application.

*Mr. Davis.* Actions alone could exhibit the intentions of men, and this must have been introduced for this purpose, for there could be no other. What other view could the defendant's counsel have? if this pamphlet showed that Mr. Webster had been guilty of any flagitious treason, they were welcome to such proof as it afforded. If here was treason it was one of a novel nature.

JUDGE PARKER. The pamphlet was probably introduced, not to show that there was treason in it, but that Mr. Webster was a distinguished leader in the Federal party at that period.

*Mr. Davis.* If it was not introduced for that purpose it was not pertinent to the issue, and could not be of any import in the consideration of the jury.

In the first place the government had given satisfactory evidence that the libel was published by Gen. Lyman, and the only remaining question was as to the motives of Gen. Lyman; whether they were malicious. The government also had proved that the libel was false; that it was an unfounded assertion, that Daniel Webster was engaged in a treasonable



plot to dismember the Union; or that Harrison Gray Otis, or Mr. Webster, or any other Federalist was engaged in any treasonable plot, etc. Such charge would equally apply to the father of Gen. Lyman himself. But did Mr. Adams contend that the persons named by Gen. Lyman were in this terrible plot? He contended that he did not. If it was not actionable or libellous to call a man a traitor, and to circulate the charge through the whole country, he should in future be at a loss to judge what was, or was not a libel; this had been done. In what situation were these persons thus falsely accused placed? They could not call upon Mr. Adams for redress, for he had never marked them out as the persons intended in his letter; who was answerable for the charge? Had he accused them by name there would have been no difficulty in the way. When they are accused by name, it places the matter upon a different ground from where it before stood; when any one was called out by name as a traitor, it was enough to stir any man's blood. If Mr. Adams had done this Gen. Lyman would have been perfectly justified in repeating the slander; the persons implicated would then have known where to have called for redress. The Federalists of Massachusetts could in all instances take care of themselves when they were called traitors for opposing the embargo; but the uncertainty of this charge of Mr. Adams, protected him from its legal consequences. Perhaps if Mr. Webster had resided in Boston at the time alluded to it would have been easy to have known who was intended by Mr. Adams in his letter; it perhaps was easy still to conjecture who were the judiciary of that period and who were traduced in the sentence concerning those who had the "management of the legislature:" but if he had called no names and left the whole affair in doubt, and another had undertaken to call out the names of those who were considered traitors, all that those so injured could do was (to use a homely phrase) to "mark the collar." Was the character of the accusation harmless? It was one of the first principles of law, that any addition or coloring to a piece written or printed by another which went to make it

still more libellous was an original libel in him who had made such addition or coloring. Mr. Adams had stated that the leading Federalists of Massachusetts were guilty, etc., but the defendant had given the names of those leading Federalists, and had included Mr. Webster of New Hampshire. Was there any aggravation to this libel of a harmless nature? Why, the Chief Magistrate of this nation, the President of the United States, was quoted as the author of the charge made: this high sanction was given to this unfounded charge and went to aggravate its nature. He could not conceive how this could be extenuated.

Another reason why this emphatically was a libel was that it was said that Mr. Adams had taken to his bosom Daniel Webster as a political friend and counsellor, who was a traitor, etc. Is it so said by Mr. Adams that Daniel Webster was a traitor in 1808? If it is so proved to the satisfaction of the jury, well. It was a matter capable of proof; Mr. Adams' or Mr. Giles' testimony could have been adduced by the defendant to have established this fact; had it been? no—and the reason why it had not been, was because it could not have been adduced—no such fact ever existed: in furtherance of this assertion, it was offered on the part of him (the Solicitor) in writing that if the defendant would make an affidavit that he expected to prove such facts he would consent to the continuance asked. This was refused and went to show that it was not even expected to prove that any such assertion had been made by Mr. Adams; then it was evidently false when it was stated that Mr. Adams had made such assertions. It had been said that a late law had altered the law of libel; that now the truth could be given in evidence, whereas formerly it could not have been: but he contended that the common law always allowed that privilege; that the truth could always have been given in evidence to rebut the presumption of malice, but now to say that falsehood could be given in evidence to rebut the presumption of malice was a perfectly legal absurdity. If the truth was spoken from good motives and justifiable ends, it always was a justifica-

tion against a supposition of malice; but falsehood thus used, and for these purposes, never. It was the highest of absurdities to say in the case of libel that the falsehood of the charge went to show the innocence of the defendant on the score of malice. This point of law was recognized in the case of the *Com. v. Clapp*, in respect to candidates for public office. If there was no malice there was no libel; if the charge was true there was no malice and therefore no libel. If any one was guilty of murder or treason and another saw fit to tell the public of the fact, still there was no libel.

In England it was true that the court had been paramount as to the intentions of the libeller and of his malicious purposes; the jury had only to find the fact of a publication. Whether the law was thus now there was a fact of no consequence before that jury: here the truth might be given in evidence according to the laws, to rebut the presumption of malice, but he was astonished to learn from his brethren on the opposite side that the falsehood of the charge could be made to answer the same purposes; the doctrine was repugnant even to common sense.

Again it was said that the paragraph "was scratched in a hurry," and therefore the defendant was not answerable. It could not be the law of the land that such an excuse could justify him; that he could scatter "firebrands, arrows and death" and then say "am I not in sport?" It was not the least painful part of his duty to comment on such a defense, for it argued a most criminal inattention to consequences which of itself was a strong evidence of malice. It seemed to be not only a legal but moral turpitude.

In the first place, there was no question as to the language used; it was plain and unequivocal, there was no ambiguity about it; the question of intention most frequently arose when there was a doubt as to the meaning of the words used; here there could be none. Had he not intended to say that Mr. Webster had conspired to dissolve the Union? Was not this true and did he not intend that the public should believe this? did he not say that Mr. Adams had said that Mr. Web-

ster was recorded upon the archives of the government as a traitor? In excuse it was said that Mr. Adams alone was intended to have been degraded; but what was that to Mr. Webster, if in an attempt to degrade Mr. Adams, Mr. Webster was injured. To degrade Mr. Adams he had no right to traduce the character of any citizen and if Gen. Lyman had done it he was liable. It was impossible that such an excuse could avail the defense; Mr. Webster was disconnected in this transaction with Mr. Adams and every body else. In this case Mr. Webster had been singled out by Gen. Lyman and made to hold a conspicuous place in the gallery of portraits presented. The excuse of its having been "scratched off in haste" would not avail in this case; the defendant had in this and on all other occasions, when brought before the public, exhibited great self-possession and readiness of mind. He had twice repeated Mr. Webster's name, which he had not done of any other.

*Mr. Hubbard* pointed out another name twice used, towit, Mr. Josiah Quincy's.

*Mr. Davis.* But it was said that there was no intention to injure the character of Mr. Webster. Why the eyes of his (Gen. Lyman's) mind might almost be said to have been put out, if he did not think that these charges would operate to the injury of Mr. Webster; if it were thus, how could he be exonerated from the charge of a malicious intent: the charge originally made by Mr. Adams was left without application, it was a blow in the dark; Gen. Lyman was the avowed author of giving a name and circulation to the poison. In proportion to the respectability of the defendant, was the extent of the mischief created. Instead of at once pronouncing the assertions of Mr. Adams to be false and calumnious, he adds to their venom and effects. In the face of the whole country and of Europe, for Mr. Webster was as well known there as he was here, the defendant had stigmatized him as a traitor, and asserted that he had been so stigmatized by the President of the United States. How could Mr. Webster return to his seat in the Senate under this imputation? might they not say

to him, "with what face can you come here, how dare you show yourself among gentlemen. Go home and hide yourself in the kennel, or the cave of the bandit, where you hatched those plots of treason."

He would ask whether the comments were not calculated to enforce the belief that Mr. Webster was guilty of treasonable plots. The accusation was made on the highest authority as a sanction for it: for whatever might be the opinions respecting Mr. Adams as a man or a politician, he had the highest character for truth. No man thought more sincerely of its obligations. This gave to the accusation a character peculiarly unpleasant. It was asserted that Mr. Adams had unequivocal evidence of Mr. Webster's treason. And when (another tremendous assertion) it was said that Mr. Adams had placed his name on a secret record in the archives of the Government as a traitor to his country, it was of no sort of consequence whether it was a letter in the bureau of Mr. Giles or a slip of paper given to the winds.

But the defendant "had placed Mr. Webster on the list of his friends." This was not true, and he found the refutation of it in the publication itself, where he calls them all "ardent friends of Mr. Adams." They might be his personal friends, but it had been acknowledged and was well known that since the nomination of Mr. Adams for the Presidency, Gen. Lyman had been politically opposed to these gentlemen. Besides, when this paper went to Washington, what would it avail that these gentlemen were the friends of Mr. Lyman. How would it be known there that Mr. Otis, Mr. Prescott, etc., were the friends of the author of an anonymous libel.

But if only one millionth part of the injury, which he had supposed, had been done and suffered, what was the proper course? To make a fair and frank avowal of the mistake, if it was one, and a confession of the injury. This was the course which a just man and a gentleman should pursue in a moral and religious community. But suppose this offense had been given in a different section of the country;—it would not have been an hour before one or the other would have

been a dead man. Suppose that in this libel the name of McDuffie<sup>26</sup> had been inserted instead of Mr. Webster, the gallant gentleman instead of being brought before a civil tribunal, would have occasion to exclaim, like Macbeth,

———"Lay on McDuff,—  
And damn'd be he, who first cries hold, enough!"

It surely could not be required for him who was libelled to go cap in hand to the libeller to ask for explanation. But the reason assigned for not making an acknowledgment was a point of etiquette! He, the defendant, had time enough to make it, and he knew that it was expected. And whose duty was it to move first? Was it his who had been libelled? No, it was his duty to remain in dignified silence until the proper time came for an appeal to a tribunal of his country. It was the duty of Gen. Lyman to offer reparation.

Still Mr. Webster had waited twelve or fourteen days before the complaint was presented to the grand jury, in which time no offer of reparation had been made, from which it was to be inferred that no explanation was ever intended on the part of Mr. Lyman.

From the tenor and spirit of his affidavit it was manifest that Gen. Lyman never intended to make satisfaction except upon the verdict of a jury and the judgment of court. In a case in the county of Bristol reported in 3 Pick. 379, an affidavit had been filed and great parade made of proving the truth of a libel, but afterwards on trial no attempt was made to give evidence of the truth. It was held that the affidavit was evidence of malice. In the present case every indication was given that the defendant expected to prove the truth of the libel. I offered to enter a *nolle prosequi* if he would make a frank acknowledgment. His declining to do this was inconsistent with his declarations of innocent intentions with relation to Mr. Webster.

<sup>26</sup> McDUFFIE, GEORGE. (1790-1851.) Born Columbia Co., Ga. Graduated Univ. of South Carolina; admitted to bar and member South Carolina Legislature, 1818; representative in Congress, 1821-1834; United States Senator, 1836-1846. He was a noted duelist.

*Mr. Dexter.* The affidavit was so mixed up with opinion, matters of construction as well as of facts, that no man could conscientiously swear to the truth of the whole and this, and this only, was the reason why he could not. The offer on the part of the Solicitor was that if Gen. Lyman would swear that he expected to prove that Mr. Webster was concerned in a treasonable plot, then the continuance would be granted. But the affidavit only stated that he believed Mr. Adams and Mr. Giles to be material witnesses in the case, who might throw further light upon the subject if present. This was the true meaning of the affidavit referred to. The construction of Mr. Adams' and Mr. Jefferson's letters were such as to induce a belief that some facts important to the issue might be obtained from the former. The refusal to swear point blank that the defendant believed Mr. Webster was guilty of treason, therefore ought not to operate against Gen. Lyman: no man in the circumstances of the case could be expected to take such an oath.

*Mr. Davis.* There seemed to be an insincerity in the affidavit, pretending that the truth was to be given in evidence, although it never was intended to have been done, which exhibited malice from the very affidavit itself—the authorities quoted bore him out in his position.

From the great fatigue which the jury as well as all concerned has experienced in this long trial, I shall, without further remark, now submit the cause to them; trusting that they would discharge their duty with that impartiality which the trial by jury contemplated and which might be expected from men so intelligent and enlightened.

#### THE CHARGE TO THE JURY.

**THE CHIEF JUSTICE.** Gentlemen of the jury: It was unfortunate that there ever was occasion for this prosecution. It was unfortunate, too, that, after it commenced, there had not been some amicable disposition of it, upon explanations not derogatory to the honor of the accused, and yet satisfactory to the feelings of the party aggrieved. It was very apparent, from some of the evidence in the case, that, but for the interposition of some point of etiquette to which importance had been attached, such a disposition of it would have taken place. It is one of those prosecutions which, though public in its character, yet, as it is instigated by an individ-

ual as much to protect his own character as for the public interest, an accommodation would be permitted by the court. But the honor of the gentlemen was in their own hands, and if that is thought to create an insuperable barrier between them, we can only regret that the controversy must be terminated by the *ultima ratio* of peaceable citizens—a verdict of the jury of their country. In other parts of the country this *ultima ratio* might have been of a different kind. No case could be presented to a jury with less reason to apprehend that their final opinion would be founded upon anything but what ought always to be its basis—the law and the evidence

The accuser and the accused stand before you, gentlemen, with high claims upon your consideration and respect. The former has brought much reputation and dignity to this his adopted state, by his eminent talents in every department where he has been called to act. His name has pervaded every part of the Union, and the fame of his talents has gone far beyond its limits. The latter is a native of your own city, has been deservedly a favorite of the citizens, and has been highly useful to the commonwealth in civil and military departments and in support of those institutions which are the pride and ornament of the city. Between such men it must be unpleasant to be called on to decide; but the law has summoned you to this duty, and you will discharge it faithfully; nor is there any reason to apprehend that any political feeling or circumstances will influence or pervert your judgments.

Though a great political struggle has existed, it is now over, and I believe, has, in this part of the country, left much less of bitterness behind it, than any preceding conflict of the kind. We know too well the value of independent opinion, and estimate too justly the free right of suffrage, to call in question the honor and integrity of those who take a side different from our own. An administration man and a Jackson man can sit, side by side—receive the evidence and arguments of a cause—and agree or disagree in their results,



without any reference to their past political differences. Such ought to be the case in a country like ours—such, he believed was the case; and with respect to those political events of past times, which the President has seen fit, after a burial of twenty years, to spread before the nation, of which disclosure the present prosecution is one of the first fruits, the young, who know nothing except from the President's communication, when they see the names of those who are branded as traitors, will smile with incredulity; and those who are old enough to have been partakers in the plot, will withhold the expression of their opinion until a fit occasion arises to divulge it.

The case before you, gentlemen, is a prosecution by indictment for a libel, and a libel of a political bearing and character. Prosecutions of this nature have, both in England and in this country, been the source of more trouble and disquiet than any other. They excite the passions and feelings of the friends and partizans of those who are immediately interested, and the contagion is apt to spread through the community.

The liberty of the press is always a subject of discussion in such cases, and this is a subject which, more than any other, engages the public attention and interests the popular feeling. And very justly—because the press is the chief engine to create and sustain civil, political and religious liberty.

It has been truly said that no country where there is a free press and an educated people, can remain long under a despotic government; and I believe that no country, without such a press, however popular may be its forms and institutions, can long remain free. It is the sustaining, vital principle of freedom—it proclaims the vices and abuses of government—the rights of the citizen—the merits and demerits of rulers—and these are its proper and legitimate offices. He who would restrain it in the exercise of these functions, commits treason against the fundamental principles of civil liberty.

But the press is not invested with the power or right of

invading private character or of circulating falsehood against public or private men. It may promulgate truth, however harsh and severe, with good purpose, and with an honest view to expose or reform; but it cannot, with impunity, under the garb of good motives, and justifiable ends, traduce and calumniate. Powerful as the press is it has a master; that master is the law, which, when it transgresses its legitimate bounds will punish the transgression. It may be difficult accurately to define these bounds; they contract or extend with the subject about which it treats. Each case stands almost independently of every other, depending upon the facts or circumstances which belong to it, and hence the principle now universally acknowledged in this country, and in England that the jury, who are a selection from the people, shall determine the whole case, both as to law and fact, by a general verdict of guilty or not guilty, unless they choose to refer the matter of law to the court in the form of a special verdict.

There have been great controversies upon this subject, and the highest order of talents exercised upon it. Until quite a recent period in English history, the judges arrogated to themselves the right to determine the criminality of an alleged libel, leaving to the jury the power only of finding the fact of punishing and the truth of the innuendoes. But in the late reign of George III. by an act of parliament, the whole power of determining the facts and law has been vested in the jury.

I believe that was always the law with us; it certainly is now. It never could have been otherwise in practice, whatever might be the theory—for the jury have always had the right to return a general verdict, which involves both law and fact, and when there was an acquittal, there was no power in the court to suspend or defeat their verdict. With this popular guard over the rights of the press, and the rights of the citizen, the system is safe from any thing but occasional errors, which though to be regretted, will scarcely be able to produce general mischief. But the jury have a right to the

advice and opinion of the court upon all matters of law arising in the course of the trial; and indeed it is the duty of the court to give such advice and opinion clearly and distinctly in order that the jury with whom is the final responsibility, shall not excuse themselves from an erroneous verdict, on the score of ignorance.

The decision of this cause, then, gentlemen, rests entirely with you, and you must act with the intelligence and discretion which the occasion demands.

It is my duty to state to you the leading principles which ought to guide your deliberations, and, where I perceive any question of law, to endeavor to solve it in such manner that you may clearly comprehend it. If I should be mistaken to the prejudice of the defendant, he is not without remedy—if in his favor, and the opinion should be sanctioned by your verdict, he is discharged.

The publication complained of as a libel is contained in a newspaper called the *Jackson Republican*, bearing the date of the 29th October last. The paper you will have in evidence, was purchased at the office of the proprietors of that paper and the defendant has acknowledged in a letter to Messrs. Curtis and Fletcher, in answer to one written by them, that he is the author of the piece complained of.

The fact of the publication being thus proved the paragraph is submitted to your consideration; and the question to be settled by you is whether it is criminal or libellous. And the general question comprehends all the various points which have arisen in the case—such as the sense and meaning of the words made use of—the explanation attempted to be given by reference to other communications in the same paper, and whether it is false and malicious in the sense in which these terms are used in the law. These are all matters clearly within your province to determine. And first, I think you will read the piece itself to ascertain as well as you can its true import and meaning; and if you find it has reference to any other communication you will examine that in order to come at the true sense and meaning of the piece set forth in the indictment.

It purports to be a commentary on certain communications agreed to have been made by the President of the United States, in the *National Intelligencer*, at Washington, which are printed in the same number of the *Jackson Republican*. Without doubt the defendant had a right to publish any fair commentary upon that communication made by the President. If that high officer will commit his thoughts and opinions, or what he considers facts, to a public newspaper, they become public property, and any citizen has a lawful right to criticise, or speculate upon the opinions and to deny the facts or comment upon them, observing only the rules of decorum in his treatment of the subject. But he has not a right to misrepresent them or to draw unreasonable inferences from them to the prejudice of the reputations of other persons. If he does this wilfully in such manner as so expose a third party to public indignation, hatred or contempt, he cannot shelter himself under cover of the communication upon which he made his commentary.

The first sentence of the commentary is unexceptionable. The writer then proceeds to say:

The reader will observe that Mr. Adams distinctly asserts that H. G. Otis, S. Dexter, W. Prescott, Daniel Webster, and others of the Federal party of their age and standing were engaged in a plot to dissolve the Union, and re-annex New England to Great Britain, and that Mr. Adams possessed unequivocal evidence of that most solemn design. The reader will also observe that in the statement just published of Mr. Adams there is no intimation whatever that he does not still believe what he revealed to Mr. Jefferson and Mr. Giles twenty years ago.

This, by the Government, is believed to be libellous; not as a direct charge by the defendant that the gentlemen whose names are mentioned were engaged in the plot therein mentioned—but because it states that Mr. Adams distinctly asserts that they were. On turning to the communication of Mr. Adams I suppose you will not find that he has mentioned any person by name as engaged in such a plot; nor does he distinctly assert that such a plot existed; he speaks of the purpose and views of certain leaders of the Federal party,

who had the management of the state legislature. That the embargo would be met with forcible resistance, supported by the legislature, and probably by the judiciary of the state. That if force should be resorted to by the government it would produce a civil war, and in that event he had no doubt the leaders of the party would procure the co-operation of Great Britain. That their object was, and has been for several years, a dissolution of the Union, and the establishment of a separate confederation, he knew from unequivocal evidence although not proveable in a court of law, etc.

There is then no distinct assertion of Mr. Adams in the communication that the several gentlemen whose names are mentioned in the commentary were those who were engaged in these proceedings. There is, however, a distinct assertion that the leaders of the Federal party were so engaged and the counsel for the defendant argue that the gentlemen whom he has named being at the time such leaders, the insertion of their names did not add any thing in substance to Mr. Adams' communication: and I am of opinion that if you should be satisfied that the gentlemen named were the persons whom Mr. Adams intended to designate as leaders of the Federal party at that time—that the insertion of those names would not be an unfair or unjustifiable commentary upon the communication—it would be only filling up a picture, the figures of which were as distinct and discernible to the mind, before as after filling up. And though this might be a libel by Mr. Adams, yet if the commentary introduce no new matter, and was only a fair exposition of the communication, it would not be a libel.

But the case of Mr. Webster may be considered by you different from that of the other gentlemen named. It is insisted by the government that Mr. Adams in his communication confines his remarks to the leading Federalists in the state of Massachusetts; and that, as Mr. Webster was not then an inhabitant of this state, he could not have been intended by Mr. Adams as one of the leading Federalists to whom he imputed the objects, acts, and purposes mentioned

in the communication; so that the insertion of his name was altogether gratuitous and unjustifiable.

The answer given to this is that Mr. Adams spoke of or had in view the Federal party of New England and their leaders; and that, as Mr. Webster is admitted to have been an eminent and conspicuous Federalist in New Hampshire, he fell within the class described by Mr. Adams.

You will look over the communication of Mr. Adams, and see whether he has reference to any as chargeable with high political offenses, except those of his own native state. I do not think it will do to refer to Mr. Jefferson's letter on this point, because the defendant says that Mr. Adams distinctly asserts, undoubtedly referring to Mr. Adams' own communication. The insertion of Mr. Webster's name, if not justified by the communication of Mr. Adams, was not warranted; and if done wilfully, and the effect is to expose him to scorn or hatred, it is libellous; if by mere inadvertence or mistake, as has been suggested, it is not so.

The other part of the paper objected to as libellous, is in these words: "Why for three years he has held to his bosom as a political counsellor, Daniel Webster, a man whom he called, in his midnight denunciation, a traitor in 1808."

This, again, does not charge Mr. Webster with being a traitor, but alleges that Mr. Adams had called him one. To say, in print, that a person of high standing has called one a traitor, is libellous, unless it appears from the context that it was intended to show that such a denunciation was unjust; for the imputation of crime is not necessary to constitute a libel. Any opprobrious terms, calculated to expose the party of whom they are used to contumely, may be libellous. It is not so in mere verbal slander, unless some special damage be proved.

The last section of the paper described in the indictment is in these words: "And as the last question why, during the visits he has made to Boston, he always met on friendly, intimate, and social terms, all the gentlemen whose names, a

few years before, he placed upon a secret record, in the archives of the government, as traitors to their country?"

It is argued by the counsel that this does not intend necessarily that Mr. Webster was one of those whose names are thus recorded. Of this you must judge; if by looking at the whole piece you are satisfied the writer in this sentence, had reference to all those whose names are mentioned below, then of course Mr. Webster is included. It is also said that this is a mere rhetorical flourish, and means nothing more than was contained in the preceding parts of the comment; and if you are satisfied that the writer, by records and archives meant nothing more than the letters of Mr. Adams, referred to in his communication, the remark is fair, and this should not be considered as distinct libellous matter, but a mere amplification of the former charge. But if you believe the writer intended by this to assert that this charge of his being a traitor, was actually recorded, it is certainly the most serious part of the subject.

But there is another ground of defense taken, distinct from this detailed view, and which covers the whole matter of the supposed libel.

It is argued that from the political purpose with which this paper was set up—it being for the lawful object of advocating the election of the successful candidate—and from the obvious tenor of the piece itself, having due reference to the communication it was intended to criticise—that it necessarily follows that the use of the names was not with a view to prejudice those persons, but merely to put in a strong point of view what was thought by the writer to be an improper and dishonorable conduct on the part of Mr. Adams—that these names were holden up to the community as illustrative of the extreme injustice of Mr. Adams' accusation against the leaders of the Federal party. If this be the true purport and effect of the publication, and it would be so understood by intelligent readers—then certainly it is not libellous; for if the words of a supposed libel are not calculated to injure the party of whom they are used in the opinion of

the community, they have no noxious meaning or tendency and such tendency is an essential ingredient of offense.

This is a matter about which you will exercise your best discretion. If you are satisfied that the object of the writer was to disparage Mr. Adams in the minds of the citizens and that these names were held up in contrast with his communication, and that such is the natural meaning, then the defendant will be acquitted. You will not, however, strain the words to give them such a meaning, but judge of them as well as you can from the effect they produced on you when first you read them, comparing the opinion you then formed with the arguments and evidence you have now heard and form your opinion cautiously and deliberately on the real tendency and effect of the publication.

In regard to a malicious intent, which it is said must be made to appear, the law does not require proof of particular malice. If the publication was unjustifiable, and its natural tendency was to create hostile feelings, aversion and hatred towards Mr. Webster, malice is inferred by law.

The inference which the law makes, may be rebutted by direct proof of an honest purpose and an innocent design; without such proof the act itself is evidence of malice. You have had all the evidence on this part of the subject and will judge of it.

With regard to the form of the indictment, in which it is supposed there is an unnecessary accumulation of harsh epithets I suppose it is in the usual form. The prefatory words of general accusation, are wholly immaterial. If the defendant is convicted, it is only of this libel; his character in other respects will stand as fair as before. This is the antiquated dress of indictments, which might usefully be exchanged for a more modern costume.

In regard to the circumstances, relied upon to prove particular malice, as they have happened since the publication, much reliance cannot be placed upon them; as subsequent circumstances have produced them, and they will not go far to show the intent at the time of publication.



## THE JURY DISAGREES.

The *Jury* retired when the Court, after waiting some time for their return, adjourned until 3 o'clock p. m., when the *Jury* were called in and asked by the Court if they had agreed to which the Foreman replied they had not.

JUDGE PARKER. Is there any question concerning the nature of the law in this case, if so, I will explain it further, or is your disagreement solely upon the facts?

Mr. Foreman. It is entirely upon the fact—we do not disagree upon the law.

JUDGE PARKER. Is there any prospect of an agreement?

Mr. Foreman. In my opinion there is none whatever.

The papers were then taken from the jury and they discharged from any further consideration of the case.<sup>27</sup>

<sup>27</sup> The *Boston Advertiser*, of December 22, gave the following as the action of the jury after they had retired for consultation:

"We publish the results of several ballotings of the traverse jury in the case. The following is authentic: First ballot, for conviction, 9; for acquittal, 3. Second ballot, for conviction, 10; for acquittal, 2. Third ballot, for conviction, 10; for acquittal, 2."

The case was continued until the March Term, 1829, and Mr. Lyman recognized in the sum of \$1,000, without sureties, for his appearance at that time. In March, 1829, the case was again continued upon the same recognizance until the November Term of the same year, when the Solicitor General entered a *nolle prosequi* in the following words, written by him upon the back of the indictment now on file in Court:

November Term, 1829.

This indictment was committed to a jury at the November Term of this Court, 1828. This jury, after a full and deliberate hearing of the evidence, arguments of counsel and a learned and impartial charge from the Chief Justice, were not able to agree upon a verdict. From this fact and from the peculiar circumstances of this case, I am of opinion that public justice does not require that it shall be tried a second time. I will therefore no further prosecute this indictment; for which I also have the consent of the prosecutor.

Danl. Davis, Sol. Genl.

**THE TRIAL OF RICHARD P. ROBINSON  
FOR THE MURDER OF HELEN JEWETT.  
NEW YORK CITY, 1836.**

**THE NARRATIVE.**

No criminal case ever tried in New York City caused, it is said, more excitement at the time than that of young Richard P. Robinson charged with the murder of the notorious and beautiful courtesan Helen Jewett,\* who was an inmate of a house of ill-fame kept by Rosina Townsend at 41 Thomas street. Among the frequenters of the house and a special favorite of the girl was Robinson, a clerk in a mercantile establishment, and known among his gay associates as Frank Riv-

\* Her real name was Dorcas Dyon. She was born in Augusta, Maine, in June, 1813. Her parents were Welsh, having emigrated to the United States a short time prior to the birth of their daughter. They were humble people, the father being a mechanic and the mother a seamstress. The first love of Helen Jewett was a lad named Sumner when the girl was only eleven years of age. The parents becoming aware of the intimacy, Sumner had to leave the country and took to a sea-faring life. This first intrigue of Helen was, however, kept secret from all with the exception of the families of the boy and the girl. Among the playmates of Helen were the children of Judge Weston, a wealthy resident of the neighborhood, who took a great liking to the vivacious and beautiful child and adopted her into his family. She was sent to school and received a liberal education, becoming as accomplished as she was handsome. She was now sixteen and a more beautiful girl could scarcely be conceived. Her form was graceful and voluptuous, her eyes flashing with ardent fire while her movement bespoke the well-bred lady. But she again met Sumner, who had returned from a voyage to China and from that moment her fate was sealed. Meetings frequently took place between them until at last the details of her shame reached the astonished ear of her good patron. She was cast out (her parents having previously died), and Sumner was called off suddenly to rejoin his vessel. Helen now turned her steps to Portland to seek employment, but soon entered a brothel. Here she became acquainted with a gentleman of means who took her out of the brothel after but a few days' stay and gave her a fine residence. She reigned as queen of this establishment for several months, when one day, in looking over the papers, she saw an ac-

ers. On the evening of April 9, 1836, according to the evidence on the trial, he twice rang the bell at 41 Thomas street, and at the second summons the landlady came to the door, inquired through the panel who was there and being answered that the visitor was for Helen, let the man in, recognizing

count of the arrival of Sumner from sea. She wrote to him to call and see here that evening. He did so. Benson, the gentleman to whose generosity Helen owed her sumptuous living and who had actually made arrangements to marry her, discovered the pair. A separation took place and Helen next wended her way to Boston. Soon Sumner, her first love, died of consumption. The girl felt this blow keenly and to the day of her death remembered Sumner with the deepest affection. In Boston she became entangled in numerous intrigues. Among others she engaged the affections of a wealthy broker who had completed all arrangements for the nuptial ceremony when an anonymous letter conveyed to the astonished gentleman the previous career of Helen. The girl next steered her course for New York and arrived in the Empire city in the middle of winter of 1832. Her career in New York was as checkered and extraordinary as in any other of the large cities where she had reigned with so much lustre as the "Queen of the Pave." She entered several of the most fashionable houses of disrepute in the city, walked Broadway in the afternoons, shone resplendently nightly at the theaters when "Helen Jewett" became the chief topic of conversation at the club rooms of fast young men and throughout the city generally where such topics were received and canvassed. Here she became acquainted with Richard P. Robinson. This young man was born in Connecticut of a respectable family. He possessed a handsome exterior, pleasing manners and a very passionate disposition. At the age of fourteen he came to New York in the search of fame and fortune when he was employed in a dry goods store by a relative. Even at this early age he plunged into all the licentious excesses of a gay metropolis. Quarreling with his first employer he was taken into the establishment of Mr. Joseph Hoxie, 100 Maiden Lane, where he remained up to the date of his arrest for the crime with which he was charged. At the houses of ill-repute and throughout metropolitan society generally he was known by the name of Frank Rivers. Helen loved with a fiery passion the handsome Robinson, while he for a time returned the ardor of her attachment. But he soon tired of her company and sought that of other women. Jealousy seized upon Helen and she followed him to his haunts, upbraiding him for his desertion of her. A rumor had reached her that Robinson was paying his addresses to a relative of his employer with a view to matrimony. She wrote a letter threatening to expose him and hinting at a knowledge which she had of some dangerous crimes committed by Robinson. Then it was thought the resolution was formed to murder the girl.

the person who wore a cloak, to be Richard P. Robinson, and telling him to wait a moment, she went to the parlor to inform Helen that her lover had come. Robinson pulled his hat over his eyes to hide his face from the light and drawing up his cloak for the same purpose, hurried through the entry to the stairs. At this moment Helen issued from the parlor, and catching him by the cloak, exclaimed loud enough for Mrs. Townsend to hear: "Ah, my dear Frank how glad I am you have come." Robinson made no reply and they both went upstairs together. For an hour neither of them issued from the room (except Helen who once ran down for a moment to receive a pair of shoes), but at eleven o'clock Helen came to the head of the stairs and called for a bottle of champagne. Mrs. Townsend went upstairs with the salver. Helen opened the door and as the mistress of the house handed in the tray she saw Robinson lying on the bed with his head on his arm and his face turned to the wall; she noticed, too, that the back of his head was nearly bald. Gradually all the inmates of the house retired, and at one o'clock everything was quiet. At two, Maria Stevens, whose room was opposite that of Helen, heard in the opposite chamber the sound of a heavy blow. At three there came a knock at the front door which roused Mrs. Townsend who went down to admit a visitor. She was surprised to see a lamp burning in the parlor and to find the back door open and the bar which fastened it standing by its side. Supposing that some person was in the yard who would soon return, she went back to her own room and waited a few minutes, when hearing no one come in, she went to the back door again, called "who's there" twice, without avail, put up the bar and went upstairs to Helen's room. As she pushed open the door a dense volume of smoke drove her back. When she was able to enter the chamber—with her forehead divided with a butcher's stroke and her skin burnt to a cinder where it was not laced with blood, she found all that was left of the mortal remains of the unfortunate Helen.<sup>1</sup>

<sup>1</sup> Rosina Townsend, *post*, p. 433.

The police were at once summoned; the fire extinguished, and as soon as daylight broke, in searching the adjoining premises, they found in the yard the hatchet which had done the murder and the cloak which Robinson had worn that night. The police proceeded to Robinson's boarding house, where they found him in bed with his room-mate. They ordered him to dress and placed him under arrest. Asked if he owned a cloak, he said no.

All these facts were testified to on the trial. In addition, the porter in the store where Robinson was a clerk, identified the hatchet as one which belonged to that establishment and which had been missing from there ever since the day before the murder.<sup>3</sup> The police officer who arrested Robinson testified that the prisoner's pantaloons, on the morning of the arrest, bore the appearance of whitewash on the legs, as if he had got it in scrambling over the fences in his flight; and that the cloak of which Robinson denied ownership had also the same mark of whitewash on the tassel.<sup>4</sup> A Miss Salters swore that she knew the cloak and that it belonged to the prisoner. Once when the prisoner used to visit her the tassel had been broken off and she had sewed it on for him.<sup>5</sup> Tyrrell, an acquaintance of the prisoner, had seen him on the night of the murder leave his boarding house about eight o'clock dressed in a dark cloak and as he thought a cap.<sup>6</sup> Emma French testified that she saw the prisoner enter Mrs. Townsend's house between nine and ten o'clock on the night of the murder and that he wore a hat and cloak. There were two Frank Rivers who visited Helen but this one was the prisoner.<sup>6</sup> Dr. Rogers, who held the post-mortem on the body, recognized the hatchet found by the watchman in the yard as an instrument fitted to the crashes in the skull of the deceased,<sup>7</sup> and the watchman and officers testified to the find-

<sup>3</sup> James Wells, *post*, p. 451.

<sup>4</sup> Dennis Brink, *post*, p. 445.

<sup>5</sup> Elizabeth Salters, *post*, p. 449.

<sup>6</sup> Charles Tyrrell, *post*, p. 448.

<sup>6</sup> Emma French, *post*, 451.

<sup>7</sup> Dr. David L. Rogers, *post*, p. 439.

ing of the hatchet and the cloak in the rear yard; also as to blood upon the weapon and as to the string upon its handle being the separated half of that which still clung to the tassel of the cloak.<sup>8</sup> Two public porters whose posts of business were near the store, testified to having carried letters to and fro between the prisoner and the deceased,<sup>9</sup> and several witnesses identified letters written to the girl, as the prisoner's.<sup>10</sup> A clerk in an apothecary shop testified that he had seen the prisoner in the store four or five times; that he gave his name as Douglass and about ten days previous to the murder applied for some arsenic which he said he wanted to kill rats. The witness did not sell the prisoner the arsenic, as it was contrary to the rules of the store.<sup>11</sup> A witness who boarded with Robinson identified the cloak found in the rear of Mrs. Townsend's premises on the morning of the murder as the one which he had seen the prisoner wear and which the prisoner told him he had torn at the tassel on a sleighing party.<sup>12</sup> Robinson's room-mate testified that on the night of the murder the prisoner, himself and two other boarders left their boarding house at about eight o'clock. He left the prisoner in Broadway and returned home at a quarter past eleven and went to bed. The prisoner was not in bed at that time: but when the witness woke in the night he found Robinson by his side. He did not look at his watch when he awoke, but supposed it was between one and two o'clock.<sup>13</sup> The keeper of the Bellevue prison and a deputy keeper testified to the fact that Robinson had his head shaved while in prison.<sup>14</sup>

Against all this proof the prisoner's defense was an *alibi*. A man named Furlong swore that he kept a family grocery, that he knew the prisoner from his having been frequently

<sup>8</sup> Richard Eldridge, *post*, p. 439.

<sup>9</sup> William Van Nest, *post*, p. 455.

<sup>10</sup> Joseph Hoxie, Jr., *post*, p. 454; Joseph Hoxie, Sr., *post*, 460; Newton Gilbert, *post*, p. 462.

<sup>11</sup> Frederick W. Gourgas, *post*, p. 461.

<sup>12</sup> Rodman G. Moulton, *post*, p. 470.

<sup>13</sup> James Tew, *post*, p. 472.

<sup>14</sup> Daniel Lyons, *post*, p. 477; Henry Burrham, *post*, p. 478.

in his store to buy cigars. The last time the prisoner had come to his store was at half-past nine on the night of the murder; he remained there until fifteen minutes past ten, at which time the store being closed he went away. He was sure of the time because the prisoner and himself compared their watches together. The prisoner on that occasion wore a dark frock coat and a cap. It was more than a mile from his store to Mrs. Townsend's in Thomas street, so the prisoner could not have reached there within an hour of the time stated.<sup>15</sup> A policeman swore that on the morning of the murder Mrs. Townsend had told him that when Robinson came to the house the night before he wore a cap and that she did not think she would know him again if she met him on the street; that all the girls in the house, save one, said that they did not know the prisoner and that one had since died.<sup>16</sup> Joseph Hoxie, Jr., stated that his father's store, where Robinson worked, was painted a few days preceding the murder when both the prisoner and himself got paint upon their trousers.<sup>17</sup>

The jury returned a verdict of not guilty, and Robinson went free, but soon left the city for the State of Texas, where he died.

### THE TRIAL.<sup>1</sup>

*In the Court of Oyer and Terminer, New York City, June, 1836.*

HON. OGDEN EDWARDS,\* *Judge.*<sup>3</sup>

*June 2.*

The prisoner, *Richard P. Robinson*, had been previously indicted by the grand jury for the murder of Helen Jewett on

<sup>15</sup> Robert Furlong, *post*, p. 464.

<sup>16</sup> Peter Collyer, *post*, p. 466

<sup>17</sup> Joseph Hoxie, Jr., *post*, p. 482.

<sup>1</sup> *Bibliography.* \*Dunphy and Cummins' Remarkable Trials. See 1 Am. St. Tr. 457.

\*"The Truly Remarkable Life of the Beautiful Helen Jewett, who was so Mysteriously Murdered. The strangest and most exciting case known in the police annals of crimes and mysteries in

April 10, 1836, in the City of New York and had pleaded not guilty. The trial began today.

*J. P. Phenix*,<sup>4</sup> District Attorney, and *Robert H. Morris*,<sup>5</sup> for the People.

*Ogden Hoffman*,<sup>6</sup> *W. M. Price*,<sup>7</sup> and *Hugh Maxwell*,<sup>8</sup> for the Prisoner.

An hour before the opening of the court, an immense concourse of citizens thronged the avenues and corridors of the City Hall, in hope to gain admittance to observe the proceedings. Every inch about the spacious room in which the Oyer and Terminer was held was occupied by a dense mass of anxious faces, and at the instant the door was opened the stream flowed in. It was in vain that the constables in attendance waved their staves; the mass pressed up as solid as the waters of the ocean.

Soon a phalanx of officials, like the halberdiers of olden times, came hewing their way with their long maces through the solid mass, and as they picked the passage open a bulk of staves, pressed into a circle and rocking to and fro, moved unsteadily along through the center of the press and squeezed itself into the courtroom doors. In the midst of that little circle was the prisoner, who walked to the place assigned him with a firm and steady step, looking with emotion at the forest of heads which thronged around, and occasionally nodding cheerfully when he saw a face that

the great city of New York. Published by Barclay & Co. 21 N. Seventh Street, Philadelphia, Pa. 1878."

\* "A Sketch of the Life of Miss Helen Jewett, who was Murdered in the City of New York on Saturday Evening, April 9, 1836. With a Portrait Copied from Her Miniature. Boston. Printed for the Publisher. 1836."

\* "Nation—Famous New York Murders. Repictured by Alfred Henry Lewis. G. W. Dillingham Co. New York. 1914."

<sup>4</sup> See 2 Am. St. Tr. 512.

<sup>5</sup> With him sat Aldermen Benson, Banks, Ingraham and Randall.

<sup>6</sup> See 1 Am. St. Tr. 780.

<sup>7</sup> MORRIS, ROBERT HUNTER. (1802-1855.) Born New York City; son of Robert Morris, second son of Chief Justice Richard and Sarah Ludlow Morris; admitted to bar and was a successful practitioner; member New York Assembly, 1833; Recorder New York City, 1838-1841; Mayor New York City, 1841-1844; Postmaster and member of Constitutional Convention of 1846; Justice Supreme Court, 1852; under his mayoralty the modern police force of the metropolis was established.

<sup>8</sup> See 1 Am. St. Tr. 540.

<sup>7</sup> See 5 Am. St. Tr. 360.

<sup>6</sup> See 1 Am. St. Tr. 62.



he knew. He was closely followed by his counsel, and client and counsel sat down amid a throng of lawyers, editors, reporters, pamphleteers, and publishers, who thronged the inner bar. He was dressed in a suit of blue, and for a cause that appeared during the trial, wore a wig of light curly hair.

The *Jury* were empaneled and sworn.

*Mr. Phenix* is opening the case for the People spoke of the enormity of the offense with which the prisoner stood charged—characterizing the circumstances as the most atrocious and diabolical that had ever been presented to a jury in this or any other country—not only in reference to the murder itself, but also in relation to the aggravated crime of arson which was connected with it. He said that although the evidence against the prisoner was almost exclusively circumstantial, yet it was of so strong, clear and conclusive a character as to render the situation of the unfortunate accused a most perilous and awful one.

#### THE WITNESSES FOR THE PEOPLE.

*Rosina Townsend.* The last time that I saw Helen Jewett alive was on Saturday night, 9th of April about eleven o'clock; the prisoner at the bar was known to me by the name of "Frank Rivers." Helen Jewett had been a resident and boarder in my house three weeks; cannot recollect the number of times I had seen prisoner at my house before 9th April; think I had seen him there six or seven times; was at one time called upon by Helen Jewett to notice Frank Rivers (as he was called) particularly. This was on the second or third night after Helen Jewett came to live with me; saw the prisoner on the night Helen Jewett was murdered. A person knocked at my hall door. I went and asked who was there. This was about half-past nine.

When I asked who was there—the door was still locked—I asked a second time the same question. The person outside then said is Helen Jewett or Miss Jewett (cannot say which) within—that he wanted to see her. Upon getting an answer to my second inquiry, I opened the door. The reason I did not open the door to the first answer was that I wished to ascertain who was the person making the inquiry if possible by his voice. The reason I wished to ascertain this was that Miss Jewett had requested me not to admit a certain young man who went by the name of Bill Easy to see her if he should happen to come there. His particular nights for visiting here were on a Saturday night; he had previously visited her on each Saturday night

since she had been at my house. The reason Helen Jewett gave me for not wishing to see Bill Easy that night was that she expected Frank Rivers to visit her.

When I endeavored to ascertain who was the person at the door from his voice, I did not positively know that the person outside was Frank Rivers, but I positively knew it was not Bill Easy's voice. I mean by Frank Rivers, the prisoner.

When I opened the door, I discovered it was Frank Rivers or Mr. Robinson who was there. He wore a dark cloth cloak; cannot say exactly what color; he stood close against the casement by the door post. There was a lamp light in the entry which fell right upon his face; am certain this person was the prisoner; as soon as he entered he raised his cloak so as nearly to conceal his face. He did not say a word when he came into the entry, nor did I say anything to him. He went on before me towards the parlor door at the end of the passage, and I followed close behind him. The parlor door stood upon a jar; I went and pushed it open and called for Helen; she was then sitting in the parlor nearly opposite the door; told her that Frank had come. When I told her this he had turned the entry to go up stairs. There are two stairs in that house—which is a double house—one being on the left and the other on the right of the entry—both leading to the same landing. Frank went up the right stairs, Helen Jewett's room was in the second story, back room at the west side of the house, the door of which is nearly opposite the landing of the right stairs.

Immediately Helen came out of the parlor and followed him up. When she came out of the parlor she took hold of Robinson's cloak and said: "My dear Frank, I am glad you have come." He had reached the first landing when she caught hold of his cloak. Helen remained up stairs a considerable time; the next time I saw her was about eleven. In the interim she came down once to receive a boot which a shoemaker brought for her. About eleven Helen came to the head of the stairs, being then in her night dress, and asked me for a bottle of champagne; if I would hand it to her she would not trouble me to carry it up stairs; went to the cupboard, but found there was none there, and having to go into the cellar, told Helen that as she was in her night gown she had better not wait—that I could take it up; shortly afterwards I took it up with two champagne glasses; Helen opened the door of the bedroom and asked me to take a glass of wine; I declined to go into the room but the door was opened sufficiently wide for the admission of the tray or waiter, so that I could see who was in the room and nearly everything in it; could see who was on the bed in the room; it was a French bedstead, and there were no curtains round it. There was a person then lying upon the bed; that person was Robinson; am perfectly sure of this. I distinctly saw the side face of the person who was on the bed, and I cannot be mistaken that the person I noticed there with his head resting on his elbow was the prisoner at the bar. He had in his other hand a paper or a

book which he was reading. There was a candle in the room which stood on one of the pillows or a little table which stood by the head of the bed. After this I immediately went down stairs. That was the last I saw of the prisoner on that night. I saw something about his head which peculiarly struck my attention. His hair was extremely thin on the back part of his head where it was parted; it was on the upper part of his head directly at the back; never have had an opportunity to observe that fact since that time.

Have mentioned the circumstance once to Mrs. Gallagher and once to Mr. Brink; think it was on the 19th of April, when my furniture was sold. When I told it to Mr. Brink, I asked him if Robinson's hair did not bear such an appearance as I have described. On the night Helen Jewett was murdered I retired to bed about a quarter past twelve. I had a clock in my bedroom on the mantelpiece. Looked at the clock that night before I retired.

Twelve o'clock was my usual hour for shutting up the house; had made that my rule, but on that night it was quarter past twelve. My bedroom was the front room on the first floor, on the right hand side of the hall as you enter the house, on the opposite of the entry directly fronting my bedroom. After I got asleep was partially awoke by some person knocking at my door, but did not awake sufficiently to know at what time this was; don't know how long I had been asleep. The person who knocked at the door asked me to let him out, and I an-

swered him in this way: "Get your woman." I remained in bed. After I had given the answer I went to sleep. About three o'clock was awoke again by some person knocking at the street door; cannot tell how long it was between the knocking that I heard at the street door and the knocking at my door, as I went to sleep in the intervening time. I let the person in who came at three o'clock; I know that person; had a light in my room by which I let that person in; after letting that person in, discovered a light in my parlor; was an unusual occurrence in my house at such a time of the night; it induced me to go into the parlor, and on going there I found a lamp lying burning on the marble table; it was a small glass globe lamp, with a square bottom; had but two lamps of that description in the house; those two lamps were generally used one in the room of Maria Stevens, and the other in the room of Helen Jewett; Maria Stevens' room was immediately adjoining that of Helen Jewett; those lamps were not used in any other rooms; when I went into the parlor and discovered the lamp, found that the back door was open, which was ordinarily fastened with a bar, so that any person inside the house could open it without a key. I went into my room and stayed there five or ten minutes, partly in a doze; recollected I had not heard any person come in, and went a second time into the parlor, and opened the back door a little wider than it was, and called out "who's there?" twice, receiving no answer, put the bar up, and secured the door; then

went up stairs and came to Maria Stevens' door first, found it fast; went to Helen's door, tried it, and found it on the latch; opened it, and smoke rushed out in torrents; ran to Miss Caroline Stewart's room, which directly opposite Helen's, knocked, told her Helen's room was on fire, and begged her to get up. By knocking I alarmed the whole house; cannot exactly say who came out of their room first, but it appeared that all the girls came on to the platform at one time. Miss Stevens and myself got into Helen Jewett's room; Miss Stevens first reached the bed; it was on fire; the bed-clothes all consumed; seemed to be all burnt without blazing; don't know whether I then called the watch or whether somebody else called them; three watchmen came in first, and afterwards four others. One side of Helen's body was burnt; when I first saw her she was lying nearly on her back, with her left side very much burnt, and a large gash on the side of her head. When Miss Stevens first got to the bed, she brought some of the ashes of the burnt clothes, and remarked that they must all be burnt up.

When I saw Helen Jewett after giving the alarm she was quiet dead; don't know that during the time Helen lived at my house that she had a quarrel with any person living there, nor that there was any dispute or ill-feeling between her and any person that visited there or any person or persons.

*Cross-examined.* Am 39; am a married woman; my husband is not, that I know of, dead; it is eleven years since I heard of

him. I was never in New York before my marriage; came to New York in 1825; previous to that time my husband left me at Cincinnati, and went away with another woman; came after that to New York; never, at any time, lived at the South, at Charleston or Savannah; my parents lived at Castleton when I was married; after my husband left went to my father's house, when I came to New York in September, 1825, and went to live in Duane street; took in sewing until December, when my head became so affected that my sight was injured, and applied to Dr. David L. Rogers who operated upon me; after I recovered went to live as a chambermaid at the house of Mr. Beekman in Greenwich street; then went to live at a house kept by a woman named Maria Piercy; that was a house of assignation; remained there until April, 1826, and since then have either been a boarder at or the keeper of a house of prostitution. Helen Jewett lived with me before she came to me at 41 Thomas street in March last; think it was in 1833, don't remember, I had a quarrel with her at that time or with any other person in relation to her. Know a person called English Charley; never had a quarrel with him in reference to his visiting Helen Jewett at my house; never had any suspicions of his visiting her. The six or seven times I have spoken of as having seen Robinson at my house during the three weeks that Helen Jewett was there occurred the last time that she lived at my house prior to 9th of April; he generally came in the night time, but once he came on

a Saturday afternoon; he was there on the Thursday night before the Saturday when Helen was murdered. He was once in my room in company with Helen Jewett and three Southern gentlemen. Robinson was known generally as Frank Rivers at my house, and was so known by many persons who came there. There were two visitors at my house who called themselves Frank Rivers, the prisoner at the bar being one of them.

When I was called by Helen to take particular notice of Frank Rivers (Robinson) she wished me to look at him and say whether he or Bill Easy was the handsomest; am not positive the person who spoke to me from outside the door on the night of the 9th April, on my first answering the knock, was Robinson, nor was very positive it was his voice when I received the second answer—but knew that it was not Bill Easy's voice. Bill Easy is a little taller person than Robinson; do not recollect that I have given any different statement; don't know whether or not I mentioned Bill Easy's name in my examination at the police office. When I first saw Robinson he was standing by the casement at the door. The lamp was near the stairway in the entry, and my back was towards it; do not think because I was between Robinson and the lamp it would prevent me seeing Robinson's face, or prevent the light shining upon it when he came in. The lamp (a globe lamp) hung very high from the ceiling, and when I opened the door I stepped a little aside. Robinson, or Frank Rivers, as I then knew him, was in the habit of lifting

his cloak up to his face, as if to conceal it, when he came to my house; don't know what his object was; his doing so, therefore, on the 9th April, did not excite my suspicion of anything. On that night when he came in, Emma French, who lived at my house, was standing at the room door in the passageway. She, I have no doubt, saw him as plainly and as well as I did. When Helen took hold of his cloak and said to him, "My dear Frank, I am glad to see you," I was in the entry near my room. Shortly after I admitted Mr. Rivers (Robinson) and he had gone up stairs, I retired to my sleeping room. That was about half-past nine; was in and out of the room several times before Helen Jewett called for champagne. It was about eleven when the champagne was called for. In the interim had been busy in admitting persons in and letting persons out of my house; admitted all the persons that came into the house after Mr. Robinson came in. No person was admitted on that night after eight o'clock that I did not admit myself; before eight o'clock other persons attended the door, and some persons might have been in the house that I knew nothing of, and whom I had never seen before; had not drank any wine or liquor that night, nor was there any drank in my room. All the liquor or wine that was had in my house that night beside the champagne that Helen had, was a bottle of champagne in the parlor, which I did not partake of. On the night of the murder I had a person in the room with me. He came about eleven and I let him in. He was

in my room when Helen Jewett called for the champagne. He was not in bed then, nor was I, nor had I then been. He remained in that room the whole night. He was in the same bed with me, and he was awakened at the same time with me by the knocking at the door at three o'clock in the morning; don't know that he asked who the person was that knocked at the door; know who the person was that came in at that hour. Robinson wore a cloth cap on the night of the murder. When I saw Robinson in Helen Jewett's room, he was laid on his stomach with the bedclothes nearly up to the shoulders; cannot say what it was he was reading; cannot say whether the candle was on the pillow or on the round table near the bed. Did not see his full face—only his side face; do not think that he changed his position in the bed while I remained at the door. The singular appearance I remarked on the back of Robinson's head, was it was nearly or entirely bald, and I noticed it because I thought I would mention it to Helen on the following morning; did not mention it to any person on the following morning, nor, that I know of, at the police office. I did not do this because I was so much agitated by the murder that I forgot many things that did not occur to me till afterwards. There were six men in my house on the night that the murder took place; admitted the whole of them after eight o'clock in the evening. I did not personally know them all; knew some of them; had ten girls in my house on that night. When the alarm was given, the gentlemen who

were in the house made their escape from the front door, in which I had left the key when I let in the second party of watchmen who came. Mr. Palmer was the first watchman who arrived at the house. It was my wish that no person should leave the house until an examination into the occurrence of the murder; was so much agitated I can scarcely say what took place on the horrible discovery of the murder being made; don't remember that when the watchmen first came into the house there were two men in their shirtsleeves standing near my door. don't know, and never heard, that the watchmen, on going up stairs, found a man partially dressed, near the door of Helen Jewett's room. All the men in the house made their escape before the coroner came there to hold an inquest. In the course of a week it is probable that from eighty to one hundred persons visited the different girls at my house. The majority of the visitors at my place are entire strangers to me. On some weeks I would have considerably more visitors than others. From my peculiar situation of life I have been frequently subjected to rude and brutal treatment from ruffians and others.

*A Juror.* Did you see the prisoner at the coroner's inquest, or at the police office, and if you did, had he his hat on when you saw him? Saw him when he was brought to my house, No. 41 Thomas street, by the officers, but he then had his hat on; don't remember whether he had his hat on or off at the police office.

*Mr. Hoffman.* Don't you remember, madam, that when you

were before the grand jury, you sat near Robinson, who then had his hat off, and that you had then an opportunity of seeing the remarkable place, as you call it, upon his head? Now I recollect, I think that I did. Did you ever think before that time of mentioning anything in reference to the remarkable discovery of yours? I think that several days previous to that I mentioned it to Mr. Brink.

*Mr. Hoffman.* Have you not, madam, seen an account of Robinson wearing a wig in one of the papers, and did not this fact lead you to make the statements to Mr. Brink and Mrs. Gallagher, that you say you have done? I saw something in the *Transcript* or *Sun*, forget which, but that did not lead me to mention the fact I have related; I had mentioned it before.

*Dr. David L. Rodgers.* Examined the body of Helen Jewett; the wounds on her head were the cause of death; the principal wound fractured the skull, compressing the bones upon the brain; the body bore every appearance of its having made no movement after the fatal blow, and that death consequently must have been instantaneous.

The hatchet found in the rear of Mrs. Townsend's was shown the witness, and he said it was such a weapon as he had supposed had been used by the murderer, and that he doubted not that that it had been the instrument of death.

*Richard Eldridge.* Am a watchman. On Sunday morning, 10th of April, about four, had some conversation with Mrs. Townsend in relation to what

had taken place, in consequence of what she said to me, I went to search in the yard and about the premises to see if I could find anything there; she said to me that when it was daylight, perhaps I might find something in the yard which would lead to some discovery. In a yard next to Mrs. Townsend's, belonging to a lot on Hudson street, I found a hatchet and a cloak (the hatchet was produced, the same that Doctor Rodgers testified to as having been likely to produce such wounds and gashes as were discovered on the head of the deceased). The cloak was found in the yard adjoining Mrs. Townsend's house, about two or three yards from the railing in the rear of the lots in Hudson and Duane streets.

*Cross-examined.* Had some talk with Mrs. Townsend before I went into the yard; also with Mr. Palmer, a watchman; think it was one of the watchmen who first made a proposition to go out into the yard. I took my own course in searching. Mrs. Townsend did not tell me where to go; went towards the southwest corner of the yard, and there perceived, about six inches at the other side of the railing, the hatchet which has been produced. The fence between Mrs. Townsend's yard and the yard belonging to the house in Hudson street is about nine feet high and in some places twelve feet. The cloak was about fifteen feet from the fence of Mrs. Townsend's yard in the yard belonging to the lot in Hudson street, and about half way across the yard between the rear of a lot in Duane street, and the rear of Mrs. Townsend's premises. The

cloak could not have been dropped in the place where it was found by a person climbing over the fence, nor do I think a person could have thrown it so far from Mrs. Townsend's yard. There is no place for a person to get away that I know of from the garden in the rear of the Duane street lot; when I first discovered the cloak I did not see that it had any string attached to it. I gave the cloak to some one belonging to Mrs. Townsend's house, and saw it about two hours afterwards before the coroner's inquest. It was then that my attention was drawn to a stain in the cloak. When I found the axe, I did not observe that there was any blood upon it. The axe and cloak were both deposited in a back room on the first floor of the house immediately under the room in which the body was lying. When I put them into this room I locked the door and, I think, I fastened the shutter so that nobody could get to them; cannot see how any person could have got away from the rear of Mrs. Townsend's by way of Hudson street or Duane street, without getting through the halls of the houses built upon the lots.

To *Mr. Phenix*. There were a number of alleys both on Duane and Thomas streets, by which a person probably might by climbing over a number of fences escape from the rear of Mrs. Townsend's house. Mrs. Townsend was the only one who saw me lock up the cloak and hatchet in the room down stairs; remained in the house until the

coroner held an inquest, after I had deposited these articles in the room, but not in such a situation that I could not see whether any person went in there with another key.

To *Mr. Morris*. Had the hatchet in my hand a second time at the coroner's inquest; the coroner asked me to examine it and say if it was the one I had found in the yard; told him it was. When he asked me if I thought a spot he pointed out on it was blood, I think I said I thought it was rust; did not until they were pointed out to me at the coroner's inquest, observe either the string on the hatchet or the string upon the cloak. Whilst I and Mr. Palmer were looking about the yard, some of the girls in the house came out to us. When I first took up the axe or hatchet it was wet and covered with dew or moisture, as if it had lain there some time. In addition to the wet on the hatchet, there was some earth on the blade, and some on the handle.

To a *Juror*. Did not see the hatchet until I got within about six inches of it, and after a good deal of walking about. Some of the girls were looking out in the yard at the time I found it.

To *Mr. Morris*. Think it was improbable, though not impossible, that the hatchet might have been thrown to the place where I found it by some of the girls who were standing about the yard; should be inclined to think such a thing could have been done. If it had, I think we might have been hurt.



*June 3.*

A great tumult and confusion took place at the opening of the court this morning. As early as seven o'clock, regardless of the wet and stormy weather, vast crowds of persons began to assemble in the vicinity of the City Hall, and at a little past eight o'clock, when the high constable arrived with his posse of officers, not less than from five to six thousand persons were packed together in one impenetrable and solid mass. At the hour appointed for the opening of the court, so alarming was the confusion and excitement among the immense assemblage, that before the judges ventured to take their seats, they sent a requisition to the sheriff, ordering him to require the attendance of his deputies, together with thirty additional constables and officers. Until the arrival of this force, it was impossible to obtain anything like order or tranquility, and even then the disorder which prevailed was truly frightful and appalling. At length the uproar became so violent, and of so aggravated a character, that it was at one time apprehended that it would be necessary to summon the aid of the military, and the mayor was sent for and advised with as to the best mode of action. During the period occupied by these proceedings, no attempt was made to proceed with the trial of the prisoner, and all business was suspended. After a brief consultation between the mayor, the police magistrates and the judges of the court, it was determined to clear the courtroom of every person except those who were within the bar, consisting exclusively of gentlemen connected with the press, the counsel engaged in the trial, and members of the legal profession. With great difficulty—and only with the most strenuous exertions on the part of the police officers, marshals, constables and sheriff's deputies—the object was ultimately accomplished. By this time it was past twelve o'clock, when the jury entered their box, and the judges took their seats.

The Court directed the officers to readmit as many of the persons outside as could conveniently take seats, and in an instant almost a thousand persons were in the courtroom, the doors immediately being closed upon them to prevent a riot.

*William Schureman.* Am the coroner for the City and County of New York. On the tenth of April, soon after daylight, was called to the house No. 41 Thomas street to hold an inquest upon the body of a female. Was at the house when a cloak was found in one of the yards in the rear. It was handed to me in the yard of the house in Thomas street by a watchman who found it on the other side of the fence, in a

yard in the rear of Hudson street; saw him coming over the fence with it. (The cloak was produced and positively identified as being the same cloak which was found by the watchman.) The string was attached to it when it was found, and from certain circumstances and conversation which then took place between me and some of the persons in the house, I was induced to notice it particularly; saw the string attached to the

cloak before it was taken into Mrs. Townsend's house; gave the cloak into the hands of either one of the police officers or one of the watchmen. There was a hatchet also found in the rear of the house. (The hatchet was here produced, and the witness identified it as being the same one as found.) Think the hatchet was found shortly after the cloak. When the hatchet was handed to me, I looked at it, but did not discover anything at that time very particular upon it. It was wet as if with dew; did not perceive a string upon the hatchet until it was brought to me a second time before the jury; think it was handed to me by Mr. Brink and he called my attention to it; then myself, in company with some of the jurors, compared the string upon the cloak and the string upon the hatchet, and they were similar in all respects, the string appeared to be new, and to have been recently cut off.

To the JUDGE. It was about daylight when the cloak and hatchet were first handed to me, and it was two or three hours afterwards—between nine and half-past—when I again saw them, they were then shown before the jury who were on the inquest.

*Cross-examined.* Do not know Mr. Eldridge the watchman; remember there was one person at the house by that name. When I first arrived at Mrs. Townsend's house there were several officers and watchmen there; cannot say how many. If Mr. Eldridge is the man who took the axe up, he must be mistaken if he says he had it in his possession half an hour before he

handed it to any one; do not think that the person who found it had it in his hand more than a minute before he gave it to me; did not notice any blood on the hatchet, but it had a reddish appearance the same that it has now; gave particular direction when I handed the hatchet and cloak to a person to keep until I empanelled a jury, to be sure to keep them safe; gave this injunction more particularly in relation to the string that was upon the cloak, as I understood from some of the persons in the house that a person had been there who wore a cloak. With the exception of the string being more dirty now than it was at the inquest, it has every appearance now that it had then; cannot say whether it is any longer or shorter. Neither the cloak nor the hatchet were found, to the best of my belief, until after I got to the house; don't recollect I made a proposition to go and make a search in the yard. I think Mr. Palmer first made the proposition—and that he first went into the yard; do not recollect I had any conversation with Mrs. Townsend on the subject of making a search in the yard.

*To a Juror.* When I first saw the string cannot say there was any appearance of its being damp. It did not appear to be dirty or muddy. The morning was a dull morning. If the string had been upon the hatchet when it was first found, it would have attracted my attention. The string, however, might possibly have been there, and I might not have seen it.

*To Mr. Morris.* My attention was called to the tassel of the

cloak before the cloak was examined, and in looking for the tassel I found the string.

To the JUDGE. When I first saw the string of the cloak it appeared to me to have been severed with a jerk or broken off, not cut.

To Mr. Hoffman. When the cloak was found in the yard, I wrapped it up and my attention was then first attracted to the tassel.

To Mr. Price. It was my intention to have the hatchet and cloak deposited in some safe place; it was my impression that the horrible murder was committed with it; I ordered them to be kept together, thinking that they might be jointly identified; the string notwithstanding this, might have then been on the hatchet and I not notice it.

To JUDGE EDWARDS. On examining the string upon the cloak now, it appears to me shorter than it was when I first noticed it; I may, however, be mistaken.

George W. Noble. Am an assistant captain of the watch; the morning of the tenth April information was brought to me at the watchhouse in the park that a murder had been committed in Thomas street; immediately started there; with me three or four watchmen; think Eldridge was in the company. We arrived at Mrs. Townsend's house before daylight, and before the hatchet and cloak were found. We were in the house nearly an hour and a half before these articles were found; was in the room where Helen Jewett was laid; heard a noise in the yard, and saw a man jump over the fence, and say "Here's the

cloak now." Immediately went down stairs and a number of my men were there. They said to me, "We've found a cloak." When I got into the yard both the cloak and hatchet were found; saw the hatchet and examined it before it was taken into the house with the cloak. I saw the string upon the cloak before it was taken into the house.

(The cloak was produced and the witness identified it as the same that he then saw. He also identified the hatchet which was shown to him.)

To Mr. Morris. Saw the string on the hatchet as it is now upon it in the yard before it was taken into the house, and directly after it was found. I did not compare the string upon the hatchet and the string upon the cloak, but Mr. Brink, the officer, did in my presence; concluded, as I did, that they were both alike. Was with Mr. Brink at the time the arrest of the accused (Mr. Robinson) was made. We found him in Dey street, between Broadway and Greenwich. This was about seven on Sunday morning.

Cross-examined. When I got to the house the coroner was not there; was there three-quarters of an hour before he came; had not discovered the cloak or hatchet before the coroner came; was in the yard when the coroner received the cloak and hatchet; they were not both received by the coroner at the same time, but not more than a moment intervened; don't know whether the coroner was standing close by Brink and me when Brink made the comparison between the string on the cloak

and the string on the hatchet; when he did make the comparison, I considered it to be an important fact; Brink considered it to be an important fact. I did not communicate it to the coroner (nor did Brink that I know of. When I was in Helen Jewett's room there were several persons round there; none of the girls said anything to us about going to search the yard; it is possible that some persons might have gone into the room where the cloak and hatchet were while Brink and I went out; it is possible some person might have entered during that time, and got possession for a time of the cloak and hatchet; Brink and I found no difficulty in ascertaining where Robinson was; we found him at his boarding house; were shown up to his bedroom. Brink told him he wanted him to get up and dress himself, and go to the police office. He did so without making any objection, merely inquiring what we wanted him for; he accompanied us in the carriage to the house in Thomas street.

To *Mr. Morris*. Did not observe anything particular in Robinson's clothes when he was dressing himself; did observe something particular, however, when we got him to Thomas street. It was on the right side of the right leg below the knee, and on the left side near the hip; took it to be lime, but cannot positively say, as I did not taste or smell it. When we went up to Robinson's bedroom, there was a young man with him. It was that gentleman who got up and opened the door. Robinson was then asleep, and he (his bedroom companion), shook him to

awake him. They slept in the same bed together. Robinson in the front and his companion at the back.

To the JUDGE. Did not observe whether Robinson's eyes were closed or not. He jumped up very quick after we got in. The girl who showed us up stairs knocked at the door. When he jumped out of bed, we merely told him that we wanted to see him, and he instantly dressed himself.

To *Mr. Morris*. After the young man opened the door, Brink and I went directly into the room. The young man got over Robinson when he jumped into bed again. I could not swear whether Robinson was awake or asleep. The young man touched him and shook him and he immediately got up. The young man dressed himself shortly after Robinson did, and accompanied us to Thomas street in the carriage. As Robinson was going out of the room with us, the young man said to him, "Do you want me to go with you?" and Robinson replied: "You may go if you're a mind to." He jumped up, dressed himself and accompanied us. When Mr. Brink and I brought Robinson out of his room Mr. Brink asked him if he ever wore a blue cloth cloak. He said no; but that he had an old camblet cloak that hung up in the bedroom. The fence round Mrs. Townsend's yard in the rear was of board and rather high. The fence all round the yard is white-washed. There is a stable adjoining the fence on the west side, and pickets are put up on the fence on that side. A person in getting over that fence into

the yard would I think necessarily whiten his trousers.

To *Mr. Maxwell*. While the conversation took place between Brink and Robinson in the entry, the young man who slept in the same room with him, was dressing himself. The bedroom door was only partially open, and I don't know whether or not the young man could hear what was said with Robinson about the cloak. The conversation was not in a low tone; Robinson positively denied that he was ever the owner of a blue cloth cloak.

*Dennis Brink*. Am a police officer; was at the house of Mrs. Townsend on the morning of 10th April about half-past four, before daylight; was there when the cloak and hatchet was found. *Mr. Eldridge*, the watchman, handed the cloak and hatchet to the coroner. I had both the cloak and hatchet in my hand before they were taken into the house. (The cloak and hatchet were here shown and identified by the witness.) Know the cloak from the tassel particularly. The string that now appears upon this cloak was in the yard before it was taken into the house. It was fastened to the end of the cloak; had the hatchet in my hand before it went into the house. I saw a string upon the handle of the hatchet. I compared the string on the handle of the hatchet with the string that was fastened to the cord of the cloak. It appeared as though it had been cut apart with a scissors or knife. It was between daylight and sunrise when the hatchet and cloak were found. I saw the string on both the cloak and hatchet not more than two minutes after they were

found. After they were given to the watchman did not again see them until they were brought before the coroner's inquest, perhaps two or three hours after. There was not a particle of difference between the strings on the hatchet and cloak when I first saw them in the yard, and when I saw them at the coroner's inquest; went with *Mr. Noble* to arrest the prisoner. I rang the bell. The servant came to the door, and I asked her if *Mr. Robinson* was within. She said yes, and led me up to his bedroom; she knocked at the door. It was on a jar and I called out, "Is *Mr. Robinson* within?" and he (*Robinson*) immediately answered and said, "Yes, that's my name." I then said to him, "I want to speak to you, I wish you would get up." He then got up and put on his pantaloons; did not then discover anything particular in relation to his dress. I discovered something white, but did not think anything of it at that time. That afterwards turned out to be lime. I asked him as soon as he got dressed to walk out with me into the hall—that I wanted to speak to him. He went with me into the hall, and I then asked him if he had a blue cloth cloak, or a cloak of any kind. His answer was no, that he had never had a cloth cloak. He then remarked he had an old camelot cloak, which was then hanging in his bedroom, at the same time pointing to it and saying "There it is." I then told him that I wanted him to go with me to the Hall or to the police office; he asked my consent to let his roommate go with him, which I gave; and his roommate did go with us, getting

dressed and ready in a very few minutes. After we got into the house in Thomas street saw the whitewash again on Robinson's pantaloons. It was partly in front and partly on the side of the right leg of the pantaloons. Saw a bench standing close to the southeast corner of the fence which struck me that a person might have used for getting over the fence.

Obtained some articles from the room of Mr. Robinson; first a miniature, after which I brought away his trunks and bureau, containing a great number of articles. I examined the trunks and bureaus for the purpose of finding some letters, but did not find any. The miniature I gave to Mr. Justice Lowndes; believe it was a likeness of Mr. Robinson.

*Cross-examined.* Have been an officer nine or ten years; have known Rosina Townsend three years. Have never, prior to that time, been in the upper part of the house; knew Helen Jewett. Have seen her at Mrs. Townsend's. Never visited her there or elsewhere. Have been several

times in Mrs. Townsend's house officially. Have had processes against persons in the house—sometimes against servants, and sometimes against the girls in the house; never knew whether Mrs. Townsend was a woman of wealth; have been at Mrs. Townsend's when I have not had any processes. Sometimes she would send for me when she had been threatened by rioters there. Never saw rioters at the house, nor a riot there. Never played cards at Mrs. Townsend's house, nor did I ever see any cards played there. Never served a police warrant upon anybody in Mrs. Townsend's house on the complaint of Helen Jewett; have on one occasion seen Helen Jewett before the Grand Jury. Have said that when I went to Mr. Robinson's house I told him to get up, that I wanted a word with him. The reason of my asking him to walk into the entry was to charge him directly with the murder of Helen Jewett—but I afterwards changed my mind, and began to ask him about the cloak.

At this stage *Sheriffs Hillyer* and *Lowndes* brought in one of a large gang of men whom they had arrested while making a disturbance outside the gates of the City Hall. The Judge ordered him to be taken to the police office for disposal by the magistrate.

*Mr. Brink.* Intended to convey to the jury that Robinson not only told me he had not a cloth cloak, such as I described, but also that he had never worn a cloth cloak. He did not tell me that he had such a cloak belonging to any other person; knew a person named Gray. He did not say anything about a cloak of that person's. I assert

on my oath I did not say a word to Robinson at his lodging rooms or at Mrs. Townsend's about the white on his trousers; and I also solemnly avow that he never told me it was paint. I never had any conversation with him on the subject. I have never had any conversation with him on the subject. I have never received any thing from Mrs. Townsend

except my regular fees for the service of processes. I never served any process on Mrs. Townsend, but I have served processes upon persons in her house for which perhaps she has paid the money; have received no other money from her. I now remember that she has paid me some money, as also some other officers, for attending her sale. She paid us five dollars per day each. I bought a clock at the sale for thirty dollars. Don't know whether Helen Jewett had any money when she was murdered. I don't know that she was remarkable in her sphere of life for having splendid jewelry, chains and dresses. When I reached Helen Jewett's room after the murder, did not find any money or jewels; was not told where she kept her money; did not find any notes or coins; believe Welsh found a small box in her room containing little coins.

To *Mr. Price*. There was considerable whitewash on the fence in Mrs. Townsend's yard. I did not notice any whitewash on the cloak except a little on the tassels. A person could have got over the fence without getting any whitewash on the cloak. A person might have thrown the cloak over the fence, and then got over.

*Mr. Price*. Now I want you to say to this jury whether in all your conversations with the prisoner, from the period of his being examined before the police, you noticed anything in his conduct, manner or deportment that led you to suspect him to be guilty of murder? I must say he acted very curiously, very differently from any prisoner that

I ever had before. How did he act? Why, he did not appear alarmed at all. I must say, however, when I told him in the coach, before getting to Rosina Townsend's house, of the accusation made against him, he changed color. That is all I know of by which he acted curiously. Did you not swear, sir, before the grand jury, you observed nothing in his conduct to lead you to suppose that he had been guilty? I do not remember swearing any such thing, do not believe that I did. Very well, sir. We will wait and see whether you did or did not when we get the grand jury here as witnesses.

*Mr. Hoffman*. Now, Mr. Brink you and I have been public officers together, and I may ask you a few questions with a little more freedom than usual. Did you ever receive any money from Mrs. Townsend for speaking to the District Attorney in her favor? I don't think that I ever did.

Did you ever receive any money from Helen Jewett? Never. Did you not know that Helen Jewett prosecuted a man named Bryd, and that Bryd afterwards turned round and prosecuted Mrs. Berry, the keeper of a house of prostitution in Duane street? I remember something of the kind. Did you not receive money for acting in behalf of Mrs. Berry on that occasion? I have received some money from Mrs. Berry sometimes. I cannot tell exactly what for or how much—perhaps a dollar or so at a time. Did you never receive any money for going to the District Attorney in relation to an indictment that

was pending against Mrs. Townsend, to intercede with him in her behalf? I never did. Who was the District Attorney at that time? Mr. Hoffman was—you were, sir.

*Mr. Hoffman.* Did you ever receive any money for endeavoring to get a prosecution settled in the Court of Sessions, that was pending against two prostitutes? I do not recollect I ever did; think I should recollect such a circumstance if I had done it. Do you recollect on any occasion having received money from prostitutes, or the keepers of prostitutes, and if you do, state what occasion it was, and how much money you received? I do not recollect ever having done anything of the kind.

*Mr. Morris.* The gentleman appears to be very anxious on this subject. I will endeavor to satisfy him about the prostitution case.

*Mr. Hoffman.* If my learned friend does not wish me to proceed with the examination I will forego it.

*Mr. Brink.* I did receive money from a gentleman for arranging a difference between two prostitutes, where one had torn the clothes of the other.

*Mr. Morris.* Who was that gentleman?

*Mr. Hoffman.* I object to the gentleman's name being disclosed; although of course if the gentleman persists in it, he can have an answer.

*Mr. Phenix.* If the gentleman does not persist in his mode of cross-examination, I shall not persist in mine.

*Mr. Hoffman.* Never mind, I will drop it.

*Mr. Schureman* (recalled). To *Mr. Maxwell.* Did not see or hear of any comparison of the string on the cloak with a string on the hatchet by Mr. Brink or Mr. Noble. I was and still am under the impression that the hatchet was handed to me immediately after it was found by the watchman; may, however, be mistaken. I did not particularly observe any white marks on the prisoner's trousers. Think he wore pantaloons of a light brown color; have expressed it as a somewhat singular circumstance, that neither Brink nor Noble mentioned to me in especial manner about their comparing the strings on the hatchet and the cloak.

*Charles Tyrrell.* Know the prisoner at the bar; boarded at the same house with him in Day street. On the Saturday night, previous to the morning on which Helen Jewett was murdered, I walked up Beekman street with the prisoner as far as the brick church; it was between 8 and 9 o'clock at night. He then wore a dark colored cloth cloak with velvet collar and facings, and I think he had a cap on.

(The cloak was produced, and it was one of such a description as was represented by the witness.)

I left him at the corner of Beekman and Nassau streets, and he went towards the park. He told me that he was going to the Clinton Hotel, but to my certain knowledge he did not go in there; have heard from him that he was acquainted with Helen Jewett, and I have frequently heard boarders in the house banter him about Helen—but don't know



positively what Helen they meant.

*Cross-examined.* Saw Robinson put on the cloth cloak before he left the house. (The witness put the cloak on and showed how he did it.) If there had been a hatchet attached to the cloak, I should certainly have seen it. I also had an opportunity of seeing the inside of the cloak before he left me in Beekman street. He pulled it open in such a manner, that had the hatchet been there I could most probably have seen it. On that evening before he left the house he was very cheerful, and had been joking with some of the boarders in the house. In the course of his talk in Beekman street, he told me that he was on that day nineteen years of age, and spoke of the circumstance with evident emotion of pleasure.

To *Mr. Phenix*. Before that occasion have seen Robinson wear a cloth cloak similar to the one which he wore on that night. When he put it on he took it either off the bed or out of his trunk.

*Elizabeth Salters*. Knew the prisoner before Helen Jewett was killed, about seven weeks before; knew him at Mrs. Townsend's during that time. He used to come and see me there. He generally wore a cloak when he came there in the night time, a dark cloak made of cloth with a black silk cord tassel. I discovered one of the tassels was off. The tassels were of long silk braid. One of the tassels that was broken off and sewed on again, was of long narrow braid; discovered this about two weeks before Miss Jewett came

to the house; was at Mrs. Townsend's the morning the murder was committed; was there when the cloak was found; made a statement in reference to one of the tassels of the cloak, before the cloak was exhibited to me. (The cloak found back of Mrs. Townsend's yard was exhibited to the witness and she identified it as the one that Robinson alias Frank Rivers used to wear.)

Never knew the prisoner before the murder by any other name than that of Frank Rivers. There was another young man who called himself Frank Rivers who used to come to the house with the prisoner. They said that they were cousins. Helen Jewett lived at Mrs. Townsend's three weeks before she was murdered. I knew her before she came there, she was a favorite among all the girls, and I never knew or heard of her having a quarrel with any one in the house, or out of it. On the night of the murder was in the house; towards morning a person called to see me. At the time the alarm of fire and murder was given, the person was in my room. He came in a quarter of an hour before I heard the alarm. I expected him there on that night. He was undressed at the time the alarm was given; did not hear him come into the house; did not hear him until he was in my room; recollect hearing a person calling for a bottle of champagne after I went to bed. It was Helen Jewett. I went to bed about half-past ten o'clock. It was about half an hour afterwards when the wine was called for; had a conversation with Robinson about the tassel that was broken off

the cloak. He said it was broken off during a sleigh ride. The conversation took place about two weeks before Helen Jewett's death.

*Cross-examined.* I have talked with Mrs. Townsend about the murder today; I also spoke to her about it, and to several other persons on the day of the murder. On the morning of April 10th, when the cloak was brought into Mrs. Townsend's did not pretend to swear to the cloak, but only to the tassel. Don't know that there is anything very peculiar in the sewing of the tassel on the cloak. My room was immediately opposite to Helen Jewett's; could not hear anything that took place in Helen Jewett's room, unless it was loud. Was nineteen years of age in April last. Before I went to live at Mrs. Townsend's lived at my mother's. Have been away from my mother's upwards of two years. Before I went to Mrs. Townsend's I lived at a house kept by Mrs. Brown. Cannot say how many persons came to Mrs. Townsend's on the night of the murder. There were several persons in the parlor, but cannot say how many, nor who they were. Did not see any person attempt to leave the house on the morning of the murder. Heard Mrs. Townsend say that a person attempted to leave the place and that she had prevented him. Do not know that Helen Jewett knew that Robinson visited me prior to coming to Mrs. Townsend's to see her. The other Frank Rivers came to see me. They have both been in my room at the same time. They used sometimes to dress a good deal

alike. When the alarm of the murder was given, I ran out of my room; did not dress before coming out. Saw several men there. Cannot say how many; was too much frightened. Did not see any of the men attempting to get away. They did get away when the doors were opened to let the watchmen in. Did not see a person at Helen Jewett's room when the alarm was given, who subsequently got away. Did not hear Mrs. Townsend speak of such an occurrence. Saw Helen Jewett's bureau examined the morning of the murder. She had a gold watch and chain and ear rings on the morning of the murder. Was present when Frank Rivers came in on Saturday night to see Helen. We were in the parlor when he came in, and she told us that her dear Frank had come. Did not see him when he came, and don't know how he was dressed. The other Frank Rivers used occasionally to visit Helen Jewett. Mrs. Townsend told me some day last week of the particular bald mark which she had observed on Mr. Robinson's head. She told me it was a curious bald place on the crown of his head. Before she told me this never knew anything of it. I have more than once seen the prisoner with his clothes off, and so exposed that I should think I could have observed the place upon his head about which Mrs. Townsend spoke; never to my knowledge did see any such place. Heard of a person's visiting Helen Jewett regularly every Saturday night, but never saw him.

To *Mr. Morris.* The name of the person was, I believe, Bill

Easy, or at all events, that was the name by which he was known.

To *Mr. Hoffman*. There was no ill-feeling between Helen Jewett and me because of Frank Rivers leaving me to visit her; never said anything to her about his visiting me; thought that she had most right to him, as I understood from her that she had known him intimately for a long time.

*James Wells*. Am a porter in the employ of Mr. Joseph Hoxie. I have been in such employment since last June. There was a hatchet in the store; was accustomed to use it for the purpose of splitting up wood. The last time that I recollect seeing the hatchet in our store, was on the Wednesday before the murder was said to be committed. Richard P. Robinson was in the employment of Mr. Hoxie in the same store in which the hatchet was; used to open the store in the morning. The first time I missed the hatchet was on the Monday after the murder; wanted it and looked for it, but could not find it. Had not heard of the murder when I missed the hatchet; did not make any particular inquiries about it.

(The hatchet found in the rear of Mrs. Townsend's house was sworn to by the witness as being the hatchet that belonged to Mr. Hoxie.)

*Cross-examined*. The hatchet was used in different parts of Mr. Hoxie's premises, and sometimes in the street for opening boxes. On the Saturday afternoon before the murder Robinson was engaged in the store up to half-past five o'clock. Have always considered him to be a

kind and amiable young man. Have seen him day by day without his hat, and never observed that he had any particular mark at the back of his head; never saw any baldness at the back of his head. Know the axe from the dark marks that are upon it, and from its being blunted in a particular way. There was never any blood upon it that I observed. On the Saturday before the murder we had part of our store painted white, and some of the upright pillars or supporters of the cellar white-washed; remember that Mr. Hoxie got some of his clothes rubbed with paint.

*Emma French*. Lived at the house of Mrs. Townsend sixteen months. Boarded there at the time of Helen Jewett's death. Know a person named Frank Rivers—he never visited me. Have seen him at Mrs. Townsend's four or five times. Knew of his being there on the night of Helen Jewett's murder; he wore a hat and cloak. My room was on the lower floor, in front, opposite Mrs. Townsend's room. Saw Frank Rivers come in between nine and ten o'clock on the night of the murder; was standing at my room door in the entry when he came in. The reason that I was at the room door is that I expected some one on that night. He did not come into my room; he went directly through the passage. Saw him enter the recess towards the stairs. Saw Helen Jewett on that night, about half an hour before he came, and she said in my presence that her "dear Frank was coming." About eleven o'clock on that night saw Helen Jewett. At that time Frank

Rivers was there. Helen came down stairs to get a boot that the shoemaker had brought. Previous to that night had spoken with the prisoner. Had seen him in Mrs. Salters' room. When he came in on the night of the murder did not hear him speak. Mrs. Townsend let him in. Before she did so, she twice asked "who's there?" The lamp in the entry was at that time lighted. It hung near the foot of the stairs. The light was so clear that I could see any person that entered distinctly.

*Cross-examined.* Have been all day in the grand jury room. Mrs. Townsend has also been there all day. There were two Frank Rivers visited Mrs. Townsend's house. Sometimes I have seen them dressed alike, except their cloaks. Robinson wore a cloth cloak, and the other Rivers wore a Boston wrapper; have seen both Frank Rivers in Mrs. Salters' room. Mrs. Townsend never said anything to me about being able to see a person in the entry by the lamp. The person Mrs. Townsend let into the house did not say a word. When he came in he put his cloak up to his face, so I could only see his forehead and eyes; thought from what I then saw of him that it was the prisoner at the bar, but I cannot now swear that it was he that I saw; cannot say why, if it was he on that night, he wished to cover his face, as I had seen him several times previously. When Helen came down about eleven o'clock, to receive the boot from the shoemaker, she was in full dress, the same as she had been all the evening. With the exception of a bottle of champagne

that Helen Jewett had, only know of one bottle of champagne being drunk in Mrs. Townsend's house on that night. It was drunk in the parlor. Did not have any more in Mrs. Townsend's room on the night of the murder; nor was I awake, until Mrs. Townsend came down stairs crying out fire. Did not see two men in the passage, half dressed, when the alarm was given; am positive of this. Saw the watchmen come in. Cannot tell how many came in, or hardly what took place, as I was much frightened. Did not hear a man say to one of the watchmen, "Don't take me, I'm not the person that was in that room." Saw some gentlemen try to leave the house and in great confusion. Some of them were undressed. A great number of strangers used to come to Mrs. Townsend's house in the course of a week. Cannot say how many there were there on the night of the murder. Live at Miss Brown's in Grand street, now. It is a house similar to Mrs. Townsend's. Cannot say how many strangers I have had to see me in the course of a week. Sometimes I had several. Have, whilst there, let persons out of my room before daylight. When I did so, I was compelled to go to Mrs. Townsend's room to get the key, that being a rule of the house. It was the custom of the girls to go to her room and ask for the key when they wished to let any one out of the house after the door was locked for the night.

*Denis Brink* (recalled). Looked into the trunks and bureau that were brought from Robinson's room and did not find a cloth cloak in them, nor did I find

one in his room; believe the corner took possession of the letters that were found in Helen Jewett's room.

*Mr. Eldridge* (recalled).

When the cloak was found it was not in a heap; it was spread out two-thirds of its length—probably about three feet.

*June 4.*

The excellent arrangements made the previous day by *Sheriffs Hillyer* and *Lowndes*, and High Constable *Hayes*, and their deputies and assistants prevented a repetition of the tumult, disorder and violence which interrupted the progress of the proceedings on the two preceding days.

Shortly after ten o'clock, the doors of the great court room were opened for the ingress of members of the bar, reporters and witnesses. All the entry gates of the hall were closed, and attended by various constables and officers and business in all other tribunals of the hall was suspended in consequence of the excitement amongst the multitude, who, notwithstanding the bars to their admittance to the courtroom, and the still damp and wretched weather, still densely congregated in the vicinity of the hall.

*Sarah Dunscombe* (colored). Was employed by Helen Jewett to do her work in the morning, and dress her in the evening. Used to go in the morning to clean her room up, and in the evening about half-past five o'clock to assist in dressing her. Was employed by Helen Jewett all the time that she was in Mrs. Townsend's house, and a short time previous at Mrs. Cunningham's in Franklin street; saw a miniature in Miss Jewett's room when I worked for her. Saw it in her possession on the Friday morning before her death. She went out and placed the miniature in my possession to clean and dust and frame. After I had done this, I put it in the drawer of the bureau. It was the miniature of a male. Have seen the miniature at the police office. (The miniature taken from Robinson's trunk by Mr. Brink on the 10th of April was here shown to the witness and she identified it as being the same which she had seen in Helen Jewett's room.)

*Cross-examined.* Used to go to Miss Jewett's room between eight and nine o'clock; went pretty punctually every morning; was with Miss Jewett on Saturday afternoon about half-past five o'clock. It was on the morning of Friday that I saw Helen Jewett's miniature; I think it was about half-past seven when I left Miss Jewett on Saturday evening. She had not finished dressing when I left the house. There was a fire in the room on that night. I made the fire. I took up some wood from the cellar for that purpose. Took up three pieces of wood. There was a carpet on the floor. The end of the bed was not near the fire place. The fire was lighted when I left the house; when I went to Helen's room at half-past five there was a gentleman in the room with her; did not see the face of that gentleman; did not hear her call that gentleman by any name; heard her say when he was sitting on a chair with his knee on the bed, "Frank." After being in the room about

ten minutes, went for a pitcher of water, and when I returned the gentleman was gone; fetched the wood from the cellar to make the fire, while he was there.

If I swore positively at the police office that I thought the young man whom I saw in Miss Jewett's room on Saturday night was Robinson, I said so without meaning it, and while I was frightened, and I therefore hope to be excused; I cannot say but I am frightened now; I was never before brought up for the purpose of swearing. Mrs. Townsend has never, at any time, told me what I ought to say. Might have said that I thought the young man who was with Miss Jewett was Mr. Robinson, from his dress and figure, and the color of his hair; but, if I did, it was because I was frightened as I had no reason to speak positively to any one; have never spoken to any one but my mother about this, and she told me to tell nothing but the truth. The gentleman I saw on the Thursday previous to the murder at Helen Jewett's room I think was Mr. Robinson. Cannot be mistaken in him. Think that the gentleman that I saw with Helen on Saturday night was dressed in black; am certain that he had not white pantaloons on.

*Joseph Hoxie, Jr.* Am a nephew to Mr. Joseph Hoxie of Broadway and Maiden Lane. Am in Mr. Hoxie's employ. Am in the same store that the prisoner was in. Think that I can identify his handwriting.

*Mr. Morris* showed the witness a letter and asked him if that was in the handwriting of the prisoner.

*Mr. Hoxie.* It does bear some resemblance to the prisoner's handwriting, but I cannot swear positively that it is. I am acquainted with his handwriting only in some measure. Have been in my uncle's employ eight months. Cannot say exactly how long Robinson has been in his employ. He was there before I went to live with my uncle. He was a sort of general clerk in my uncle's employ; and sometimes he kept the books. He began to keep the books after the partner of Mr. Hoxie went away. Francis P. Robinson, a cousin of the prisoner, was the partner. The duty of the book-keeper is not only to keep the books but to copy letters. Have seen the prisoner in the act of copying letters. Soon after Mr. Hoxie's partner left, Mr. Somerindyke was engaged as book-keeper for my uncle.

*Mr. Maxwell.* I object to the gentleman going on with the witness' examination to prove the handwriting of the prisoner—he being incompetent to prove it from the fact of being only measurably acquainted with it.

*Mr. Morris.* I submit to the Court whether I have not a right to know the extent of the measure by which the judgment or opinion of the witness, as to his knowledge of the prisoner's handwriting is guided.

JUDGE EDWARDS ruled in favor of Mr. Maxwell's objection.

*Mr. Morris.* Are you acquainted with the prisoner's handwriting from having seen him write? Don't think I am sufficiently acquainted with his handwriting to be able to swear positively to it.

*Cross-examined.* Saw the

prisoner on the Saturday afternoon preceding the murder at the store between three and four o'clock. Don't recollect seeing him in the morning.

To *Mr. Morris*. There were three clerks in my uncle's store—Mr. Somerindyke, the bookkeeper. Mr. Gilbert was the principal clerk. He used to keep one key of the store, and the partner (James Wells) the other. It was his (Mr. Gilbert's) business to lock up the store at night. Mr. Robinson (the prisoner) has, on some occasions, had charge of the key. Mr. Gilbert, I think, took charge of the key for some time previous to the night of the murder—perhaps two or three weeks.

*William Van Nest*. Am a public porter; know the prisoner; Remember delivering a letter to him. Went to the store of Mr. Hoxie, No. 101 Maiden Lane. Asked if Richard P. Robinson was within; did not know him by name at that time. As I went in at the door a young man passed me. Found out by inquiring at the store it was Robinson, the prisoner, who had just gone out; went into the street, and spoke to him in front of the store; told him I had a letter for him which I was directed to give him. Don't know that I told him who the letter was from. Think I showed him the letter, but am not certain. He told me to pass through the store, and leave the letter on a beam; thought he meant in the privy. Went through the store into the yard, but, thinking Robinson's conduct very strange, did not leave the letter, and passed through the store, and went and did a job with my cart. On re-

turning to my stand at the corner of Maiden Lane and Pearl street, the prisoner came up to me and asked me what I had done with the letter. Told him I had it still in my possession, because I was expressly directed to give it to him. Did give it to him, and he gave me two shillings. Heard of the murder of Helen Jewett about seven or eight o'clock on the morning of April 10th; went to the house and saw the corpse. When I first saw it, I did not think I had seen the person of the corpse before. On seeing the corpse a second time, on Monday morning, thought I had seen the person of the corpse, before in Cedar street. It was she who gave me the letter to take to Richard P. Robinson, the prisoner.

*Mr. Price* objected to the counsel for the prosecution proving a correspondence between the prisoner and the deceased by showing that prior to her death she had written letters to the prisoner. The only manner in which such correspondence should be proven, according to the strict rules of law, was first to establish the fact that the prisoner had written letters to her (the deceased), as every man living was liable to receive letters from any prostitute who thought proper to address him.

The COURT ruled in favor of the argument, and the examination of the witness on this subject was discontinued.

*Edward Strong*. I do not know Mr. Robinson; knew Helen Jewett; saw her twice in the street on the Saturday prior to her murder—once in the morning, and once in the afternoon. Was in Helen Jewett's room at

Mrs. Townsend's house between five and six o'clock on the afternoon of Saturday, the ninth of April, on the day previous to the murder. A black girl came into the room when I was there, on the Saturday afternoon. She brought in some clean clothes, a pitcher of water and some wood, whilst I was there; sat on a chair near the end of the bed, which is close by a window, the greater part of the time. When I saw Helen walking in the street in the afternoon there was another girl walking with her. Think that it was between five and six o'clock when I went into the house with her.

To the JUDGE. Part of the time I was there I sat on a chair near the bed, with my head leaning on the bed; do not recollect that she mentioned my name or any other name on that night.

*Mr. Morris.* Did she mention the name of any person that was coming there on that night?

*Mr. Hoffman* objected to the question and it was withdrawn.

*Samuel Van Nest.* Am a porter, stationed in Cedar street opposite No. 1. Know prisoner at the bar about a year. Knew Helen Jewett about a year. Have carried papers at different times from Mr. Robinson directed to Helen Jewett. They were folded and sealed as letters, and had every appearance of being letters.

To the JUDGE. Although the letters were directed with the name and number, he would sometimes mention Helen Jewett's name, and tell me to deliver them to her.

*Mr. Morris* handed some letters to the witness that he might identify them as being the same

that he had taken to Helen Jewett.

*Mr. Maxwell* objected to their being identified in this manner, as it was not yet proof that they were letters. For all the court and jury know they might be mere blanks inside.

The COURT ruled that Mr. Morris had a right to present the letters to the witness in the manner he was about to do.

*Mr. Van Nest.* Cannot positively swear to the identity of the letters now shown me, although I have very little doubt but that they are the same as I carried to Helen Jewett from Mr. Robinson. Only carried one letter to her in Thomas street. The most of the letters I carried to her from him were directed to Mrs. Berry's, in Duane street, where she then lived. On one or two occasions, I took back letters to Mr. Robinson from Helen Jewett. Did this when he told me to wait for an answer. Have carried bundles or packages in the shape of books from Mr. Robinson to Helen Jewett. Don't remember ever carrying any from her to him. Don't know that I could possibly identify any of the letters that I have taken from Helen Jewett to the prisoner.

*Oliver M. Lowndes.* Am a police magistrate; have examined the premises of No. 41 Thomas street. Know where the cloak and hatchet were found, but think it would be difficult to explain the precise position without a diagram. Understood the cloak to have been found in the rear of a lot fronting on Hudson street. The fence in the rear of two lots on Hudson street is so dilapidated between the privies,



that a person could easily get into Hudson street from the rear of the house 41 Thomas street. A person could not escape without going through houses. There were no alleys into Hudson street. There are alleys, or were alleys, running from the rear of those lots into Duane and Chapel streets. The lot just in the rear of No. 41 Thomas street is surrounded by a very high fence. There was an alley east of the rear of Mrs. Townsend's house, running into Duane street, by which a person could without difficulty escape. A watch and chain, and some rings, were exhibited to me by the coroner as having been obtained from Helen Jewett's room. He also took some letters and papers from her room, and I, on going there, also found some papers and let-

ters, which I brought to the police office. Was on one occasion at the house, No. 41 Thomas street, in company with Mr. Lawrence (the mayor) when the lamp in the entry of the house was lit. Did not make any experiments to see whether the lights reflected in a person's face coming in or not; believe Mr. Tompkins, police officer, and Mr. Hunt, one of the city marshals, made such an experiment. Never went to Mr. Robinson's room. Was at the police office when the bureau and trunks of Mr. Robinson were brought there. There was a little pocket wallet found in one of his trunks. Examined the wallet. It contained papers—bank bills of exchange to a large amount—belonging to Mr. Hoxie.

*Mr. Phenix* stated that it was now apparent that the trial of the prisoner at the bar was yet likely to occupy one or more days beyond the period it had already progressed, and that if any arrangement or order could be made for the accommodation of the jury on the Sunday which would intervene—consistent with the established usages in criminal prosecutions, the law of the land, and just administration of public justice—he and his associate counsel for the prosecution, as also the counsel for the prisoner would gladly accede to it. Each, or most of the gentlemen had perhaps some domestic duty to attend to, which he was anxious to fulfil, and if they could be permitted, with officers to attend them, to visit their families on Sunday they would be glad.

*Mr. Price* cited the instance of the jury impanelled in the case of Mr. Jennings, who was murdered in Orange county, the trial of which occupied seventeen days, during which occasion the jury were permitted on two or three occasions to visit their families.

The COURT said that they would take time to consider as to what would be the best and proper means of acting with reference to the jury.

*Elizabeth Salters* (recalled). Was in the room of Helen Jewett shortly after her murdered body was discovered. Found between the bed post and pillow

a silk handkerchief. Should know it if I saw it again.

(A handkerchief was here produced and identified by the witness as being the same which

she found under the pillow of Helen Jewett's bed.)

The other person who called himself Frank Rivers was in Mrs. Townsend's house on the night of the murder. He was in the lower part of the house; he was there between nine and ten o'clock; he was not there a great while; there was another person with him; he talked to me when he was there; there was a gentleman in the parlor who came out and talked to him; don't know who that person was. He remained in the entry all the time he was there. The other person also remained there with him, and they went away together. The next time I saw him was on the Sunday morning after the murder. He came to the house in company with the prisoner at the bar and the officers Brink and Newbolt. The young man I speak of was the other Frank Rivers. When they were first brought in, I cannot recollect what time it was. I have not since discovered the real name of the other Frank Rivers.

*Mr. Phenix* asked if Mr. Tew was in court, and a young man by that name rose from among the witnesses. The witness recognized him as the other young man who went by the name of Frank Rivers.

To *Mr. Hoffman*. When the other Frank Rivers (Mr. Tew) left the house, I let him out. Mrs. Townsend was then down stairs or in the parlor. I think it was about ten o'clock when I let him out. I cannot say exactly how long he was there. He was dressed in a Boston wrapper.

*Mary Gallagher*. I was at Mrs. Townsend's house on the

morning the murder was committed. Saw the prisoner; had never seen him before. Asked him what induced him to commit so cruel and barbarous an act. He replied, "Do you think I would blast my brilliant prospects by so ridiculous an act? I am a young man of only nineteen years of age yesterday, with most brilliant prospects." My answer was, "My dear boy, God grant that you may prove innocent." "Why," said he, "there's another man's handkerchief under the pillow, with his name full upon it." He then added, "I am not afraid that I shall be convicted." My answer was, "But, my dear boy, your cloak has been found on the other side of the fence." I then again said to him, "God grant that you may prove innocent, for the sake of your poor mother." Then asked him if he had seen what an awful state she (Helen Jewett) was in, with her head split open, and burnt almost to a crisp. He said, "No, they won't let me see her." I said, "If you could see, if you committed the act, I am sure your heart would break." At that time Mr. Brink came up and struck me on the shoulder, saying, "We allow no person to speak to the prisoner." I begged his pardon and sat down. He further said, "We don't allow any person to speak to induce him to say anything to convict himself." I said I had no intention of the kind.

*Cross-examined.* Reside at No. 122 Chapel street; have no husband; keep house. It was in the afternoon, before dinner, when I went to Mrs. Townsend's house in Thomas street. Towards the middle of the day

I had the conversation spoken of with the prisoner. When he spoke to me about there being another man's handkerchief under the pillow, did not know that a handkerchief had been discovered under the pillow. There were several persons in the room when the conversation took place. Mrs. Townsend was in the room—Mr. Newbolt, some of the female boarders in the house, and other persons. We spoke together in a loud tone, and all the persons in the room might have heard it, for all that I know; had never been in Mrs. Townsend's house more than three times prior to the murder—twice in the daytime, and once at night. It is two winters since I was there in the night time. Put my arms round Mr. Robinson's neck when I first spoke to him, and felt more favorable to him than otherwise. Went to Mrs. Townsend's in the day time to converse with her about some men who had stoned a number of houses.

*George B. Marston.* Knew Helen Jewett; visited her at Mrs. Townsend's; assumed there the name of Bill Easy. Know how the handkerchief spoken of got into Helen Jewett's room. Took it there several days before her death for her to mark my name upon it. When I took it there she asked me if the colors were fast; I mean if they would not fade. I bought it for a first-rate English handkerchief; reside in Cliff street; was at home on the night of the murder, after eight o'clock. After marking my handkerchief Helen washed it, and the colors washed out; she bought me another one and marked it, and kept the one

that I bought, as she said, for a duster; had no particular nights to go to see Helen, except on Saturday nights. Believe I went to see her every Saturday night that she was in the house, except the one on which she was murdered. Was there two or three times of a Saturday night; was not in Mrs. Townsend's house on the Saturday of the murder at all, neither day nor night.

*Cross-examined.* Helen Jewett was very fond of being employed at her needle. She was fond of obliging persons. Previous to washing my handkerchief, she made some shirts for me; don't know that she ever mended any. I believe she did similar favors for other persons. Have seen other clothes there. Have left things with her to be mended and fixed.

To *Mr. Phenix.* Do not positively know that Helen Jewett ever fixed or mended any articles or garments for any other person but myself; have seen her have ear and finger rings, buckles (some very handsome), a gold watch and chain, etc.; have seen her have more than one ring on every finger. I don't know what articles of jewelry Helen had shortly before her death; knew her about eight months before her death; have seen her in possession of the jewelry of which I speak both before and after she went to Mrs. Townsend's; among her buckles was a large cameo one; she had six rings, I think, while at Mrs. Townsend's—amongst them, two emerald ones; was with Helen on the Friday night before her murder only fifteen or twenty minutes; don't know in

what part of her room Helen kept my handkerchief.

To *Mr. Maxwell*. Helen was one of the most splendidly dressed women that went to the third tier of the theater. She had a variety of dresses—very valuable ones; have seen her sometimes when full dressed, wear a great number of ornaments; sometimes, however, she would dress without using such ornaments; although she had very rich and splendid dresses and jewelry, they were not more

splendid and valuable than those possessed by other females of a similar description. On the Friday night I went to see Helen, it was about nine o'clock. Don't recollect who let me in. A great number of persons used to visit Mrs. Townsend's house; have heard her house called the City Hotel; I have never heard it called the Kentucky House or the Alabama House. I was not at the house on the Sunday morning that the murder was discovered.

JUDGE EDWARDS informed the jury that the Court had duly considered the application made, on their behalf, by the District Attorney, but that it could not, consistently with its duty, permit them to leave the custody of the officers, or the immediate vicinity of the city hall, until the close of the trial. He desired the sheriff to summon twelve officers to attend the jury next day (Sunday), so that the latter might have every accommodation that could be afforded to them.

*Joseph Hoxie, Sr.* The prisoner was in my employ at the time the transaction took place; had been in my employ two years; he came to me in the capacity of an under clerk; was promoted to be assistant book-keeper, and afterwards general out door clerk; as assistant book-keeper he copied letters for me; have seen him write.

*Mr. Morris*. Did you become acquainted with his hand writing from seeing him write? Have seen him write frequently; was acquainted with his handwriting.

*Mr. Morris* handing to witness the private diary of Robinson: Is this in the handwriting of the prisoner? I dare not swear it is—there is a considerable variety of hands in the book itself.

*Mr. Morris*. Can you see any part of the book where you can

identify the prisoner's handwriting? Some parts of the book look something like the character of his handwriting; I have little opportunity of judging of any part of his writing except from what I have seen in my books, and that is a plain business hand character—unlike what I see generally in the book, On looking carefully over book, I cannot see any writing that I would venture to swear positively to be his. I would not like to swear positively to the handwriting of any man in the world, and if the Court please I will state my reasons.

*Mr. Morris*. Is it because you would not like to swear to the handwriting of any man in the world, that you do not choose to swear to the handwriting in that book? No, sir, that is only one of my reasons; there are some

parts of the book where there is writing that I believe to be the prisoner's, but I shall hesitate to swear to it positively.

*Mr. Morris.* Please, sir, point out such parts as you believe to be his. If I say even that I believe the parts to be his, I should qualify my assertion by stating that I was in doubt whether the handwriting was his, or that of another person in my employ, or whose handwriting is very similar to what I see throughout the book.

What person do you mean, sir? Mr. Francis P. Robinson. Is he in New York, sir? He is in Europe. When did he go to Europe? On the 26th of February last. Look at the latter part of the book, and at the dates, and see, after the date of which you speak, whether you find any handwriting that you believe to be the writing of the prisoner.

*Mr. Maxwell* objected to this course of the examination as illegal, and as not being within the ordinary rule of evidence.

JUDGE EDWARDS decided that it was quite proper to ask of the witness his belief as to the handwriting of the prisoner, and that his belief on the subject was admissible testimony.

*Mr. Morris* handed the book to the witness, and asked him to mark with a pencil such pages in it as he believed to be in the handwriting of the prisoner.

*Mr. Hoxie* took the book and marked a great number of pages, after which it was handed to the counsel for the prosecution.

*Mr. Morris* handed the witness a number of letters that were found in the room of Helen Jewett, bearing the name of Richard

P. Robinson, and which were sent by him to the deceased either by messengers or through the post office. Out of fifteen of the letters of the description then exhibited to the witness, he only expressed his belief that one of them was in the handwriting of the prisoner.

*Frederick W. Gourgous.* Am a clerk in the employ of Dr. Chabert, the Fire King. He keeps an apothecary's store. Was in the store of Dr. Chabert on the Saturday evening preceding the murder of Helen Jewett.

*Mr. Phenix.* Did you know the prisoner at the bar—Robinson? Not by that name, sir. Knew him by the name of Douglas.

*Mr. Phenix.* Are you certain that he is the person. Am not very positive, but think he is. It is some time since I saw him before that day. I believe the prisoner at the bar, to the best of my knowledge, is the same person who called himself by name Douglas; have seen him four or five times in Mr. Chabert's store, in the back room of the store. On one occasion he called at the store and wished to procure of me some poison; believe this was a day or two before I heard of the murder. There was another person in the store at the time, Francis Meyers. The poison that he asked for was arsenic. He said that he wanted it for the purpose of killing rats. We did not sell any to him. We are not in the habit of selling it to anybody.

*Cross-examined.* Have been in the employ of the Fire King four years. The store is 324 Broadway. We do a great deal of business, and a number of

persons are frequently in the store. Had seen the prisoner several times in the house before the murder. The last time that I saw him there was on the Saturday night before the murder. We are always in the habit of refusing to sell arsenic to strangers and others. It was after dark when he called to buy the arsenic. We have frequent applications in the course of a year for arsenic for killing rats. It is a very common thing; mentioned this circumstance to Mr. Lowndes about two weeks after the young man came to purchase the arsenic; did not go to Mr. Lowndes to tell him, he came to me; did not mention it to any one except to Mr. Chabert; did not mention to Mr. Lowndes after Robinson was arrested for the murder that a person of the name of Douglas had been to our store to buy some poison. The first time that I saw Mr. Robinson, the prisoner, knowing him to be Mr. Robinson, was in this court; knew him before as Mr. Douglas. One or two persons in the court pointed him out to be as Mr. Robinson.

*Mr. Maxwell* required the witness to point out to him any gentleman who informed him that the prisoner was Mr. Robinson, and he pointed out two persons from among the spectators—a Mr. Rockway and a Mr. Trowbridge.

*Mr. Gourgas.* Did not know the prisoner at the bar as Mr. Robinson, until he was pointed out to me in the court. Mr. Brink did not point him out to me. We have frequently had prostitutes in our store and office, the same as I expect every other apothecary in this city has. There is

a private office attached to the store, and I have seen females there frequently; have not seen more there since the murder of Helen Jewett than before.

To *Mr. Phenix.* This paper is in my handwriting. It was given by me to the prisoner. It is a receipt for money paid by him to Dr. Chabert. The person to whom I gave that paper is the same person who called to buy the arsenic.

To *Mr. Maxwell.* When I said I did not know the prisoner and asked persons where he was, I meant that I did not know where he was seated.

To *Mr. Phenix.* I mind just now that the first time I knew the prisoner by the name of Robinson was in the court; but I know the person I knew as Douglas is Robinson. Knew this from Mr. Chabert.

To *Mr. Maxwell.* There were no persons but Mr. Meyers and myself in Doctor Chabert's when the arsenic was called for.

*Newton Gilbert.* Knew the prisoner; have known him two years; have seen him write; think I can tell his handwriting.

(The diary of prisoner was here shown.)

Do not believe it is all in his handwriting. It resembles it very much.

(After carefully looking over the leaves of the journal one by one, the witness thought some of them were in the handwriting of the prisoner; and he marked twelve pages with a pencil which he believed to be so. The remainder of the pages he could not recognize to be in the prisoner's handwriting, although he said they resembled it very much.

Shown to him seventeen letters

bearing the prisoner's signature addressed to Helen Jewett, nine of them he could not identify as being in the handwriting of the prisoner, but he swore to eight of them as being so.)

Have on one occasion seen the witness wear a cloth cloak, about the latter part of February last, or the beginning of March; cannot give a description of the cloak more than any other gentleman's. I met him in the day

time at the corner of John and Gold streets, when he wore such a cloak.

*Elizabeth Stewart.* Have seen the prisoner; the first time in August last, in Reed street; kept the house there; he came to see me about a room that he wanted.

The *District Attorney.* For whom did he want the room?

*Mr. Price* objected, and the Court sustained the objection.

The *District Attorney* stated the principal object of his asking the question, was to prove that the prisoner at that time went by the very name which the clerk of Dr. Chabert knew him by. *Mr. Price* objected to this description of evidence as inadmissible and illegal; the circumstances of the prisoner attempting to obtain poison for the purpose of killing Helen Jewett, or any other woman, was not proper evidence under this indictment—in which the date, the hour, the weapon, and death were specifically charged—and therefore any evidence in corroboration of it could not be received.

JUDGE EDWARDS held that the objection was well taken.

*Mr. Morris* now offered to read the letters of the prisoner to Helen Jewett which had been proved to be in his handwriting, and admitted in evidence.

*Mr. Hoffman* objected to their being read. The *District Attorney* withdrew his proposition on the ground that he had himself some doubt as to the legality of their admission as testimony for the prosecution against the accused.

The *District Attorney* said that at this stage of the proceedings he should rest the prosecution.

*Mr. Hoffman* outlined the course which the counsel for the prisoner would pursue in conducting the defense of their client, and spoke with severity of the reputation and character of the witnesses who had been produced for the prosecution. He dwelt at considerable length upon the disadvantages under which the prisoner labored in not being able, from his comparatively obscure situation in life, to produce witnesses to prove where he was on the night of the murder, and mentioned in illustration of this, the fact that although he (the prisoner), was eating oysters and taking wine at a certain refectory in this city, as late as eleven o'clock on the night of the murder, yet from his not being known, as public

men generally were (wherever they go) by the persons who were present, he was unable to avail himself of their testimony, as they could not again identify or recognize him.

He then adverted, in emphatic terms, to the course that had been adopted by certain New York papers, in reference to the accused, taking advantage of the most minute and trifling circumstance to turn the tide of public prejudice against him. In proof of this, he pointed directly to an unfair paragraph which had appeared in the *Sun* in relation to the prisoner having had his head shaved since he had been in prison—and paid a tribute to the papers which had not resorted—for profit or effect—to such mean subterfuges, as honorable and worthy exceptions to the culpable conduct of some conductors of newspapers in the city. In conclusion, he stated, that he and his associate counsel should rely greatly for the complete exculpation of their client by proving by the testimony of a highly respectable tradesman a positive alibi, showing that the prisoner up to past ten o'clock on the night of the 9th of April last (the night of the murder), was smoking cigars in a grocery store in this city, situated full a mile and a half from the house of Rosina Townsend, in Thomas street.

#### THE WITNESSES FOR THE DEFENSE.

*Robert Furlong.* Keep a grocery store at the corner of Nassau and Liberty streets. It is about twenty feet wide and sixteen feet deep. Have kept there twelve months, before that at the corner of Liberty and Nassau streets. Have been a grocer twenty-five years. Am thirty-three years of age, and have been in the business with Miles Hitchcock. Know prisoner by sight. He has often been in my store to buy cigars. Always thought that he was a clerk in the neighborhood. Never knew his name or occupation; heard an account

of the murder of Helen Jewett read from the newspaper by a boy in my store on the Monday morning after the murder; prisoner was in my store Saturday night previous to the murder. He came there about half-past nine o'clock. He bought a bundle of cigars, twenty-five, lighted one and took a seat on a barrel, and smoked there until ten o'clock. When the clock struck ten the prisoner took out his watch and looked at it; said his watch, which was a small silver one, was one minute past ten o'clock. I took out my watch,



which I had regulated that day by Mr. Harold, of Nassau street and compared my watch with his. When the clock struck, my partner said, "There's ten o'clock, and it is time to shut up." That was our usual time, and the porter went out to put up the shutters. Before he shut up, he brought into the store out of the street a number of barrels that were standing there. Robinson remained seated in the store until he did this, smoking all the time, and by the time the porter got the store closed, he had nearly got through the second cigar. Mr. Robinson remarked that he was encroaching on my time. I replied, "O, no, not at all; I shall remain at the store until the boy returns." When Mr. Robinson first came into the store, my partner was asleep, and he remained dozing, with his head laid back and his mouth wide open, until Mr. Robinson, in a jocular manner, knocked the ashes off his second cigar upon his face, which awoke him. He woke just before the clock struck. Prisoner wore a dark colored frock coat and cap. Before he went away, he stood a short time on the stoop, and afterwards said, "I believe I'll go home; I'm tired," and then bade me good night; was ten or fifteen minutes after ten when he left my store; think it to be a full mile from my store to Thomas street. When I first heard the murder on the Monday morning, I did not think very much about it, the woman being one of those characters that so often appear in the papers. It was Wednesday following before I thought anything about Mr. Robinson, and learning then that

he was one of Mr. Hoxie's clerks in Maiden Lane, and not having seen of him for two or three days had the curiosity to pass by that store, but did not see him. I still felt certain that it must be he, and went up to the Bellevue, knowing the keeper, to see him; cannot say positively what day of the week this was. It was about a fortnight after the murder. My porter boards in my house; am a married man; live with my wife. As soon as I saw him at Bellevue recognized him as being the same person that I saw in my store on the Saturday night. He also recognized me and called me by name. Told him I was sorry to see him in that situation, but that justice would be done; am positive that prisoner here is the person who was in my store on the ninth of April; cannot be mistaken in this. Am not related to the prisoner, nor to any of his connections, in any way, even in the most distant manner.

*Cross-examined.* I did not positively know that the prisoner was a clerk; only supposed from his youth that he could not be an employer. He had been in my store frequently before the Saturday night, perhaps twenty times within a month or so. He has often lighted cigars in my store, and sometimes he has stopped to smoke there ten or fifteen minutes. Remember some remarks he made about the weather, about its being unpleasant; was reading the paper nearly the whole time he was there—the New York *Evening Post*. It did not rain on that night, but it was damp. When prisoner was in my store on Saturday night he wore dark clothes

entirely—coat, vest and pantaloons; did not know that the prisoner was a clerk in Mr. Hoxie's until I saw him at Bellevue; began to think from what I had read in the papers, the person arrested for the murder must be the young man I had seen at my store. The paper gave a description of his person, his stature, his dress and general appearance that exactly agreed with the young man who came to my store. Mr. Burnham one of the keepers, was present when I first went there; told him that my object in wishing to see Robinson was mere curiosity, to ascertain whether or not I knew him. Mr. Burnham called him out. I said to Mr. Burnham, "Now let us see whether he will speak to me," and as soon as he came up to me he shook hands and said, "How d'ye do, Mr. Furlong." The second time I went to see Mr. Robinson at Bellevue, Mr. Lyons accompanied me to his cell, and told me I could not say anything to him without his being present. Told him I did not wish to say anything, that I merely wished to have a good look at the prisoner in the event of my being brought up as a witness, so that I could not be mistaken in him. Was not in Robinson's company three minutes the second time; merely asked him how he was, and he said very well. Mr. Burnham told me that if I knew the facts that I said I did, I ought to communicate them to prisoner's counsel. Subsequent, Mr. Hoxie's clerk called upon me and requested me to go and see the gentleman; did see him and told him the whole story.

From the time I saw Mr. Rob-

inson at my store on the Saturday night, I have no doubt in my mind up to the present time that he is the person who was there; am positive of it.

Have no doubt that is the watch that Robinson showed me on Saturday night, when he was at my store; remember that in comparing his watch with mine, I remarked from its thickness, that it was a shad.

*Joseph Hoxie, Sr. (recalled).* The watch now presented is one that I have known the prisoner to wear several months. I bought the watch for him myself.

*June 6.*

*Peter Collyer.* Am a watchman; on duty the night of the murder between Franklin and Chapel streets; heard the alarm rap from the house in Thomas street. I was the fifth man who got to the house. Remained at the house until daylight. Saw Rosina Townsend that night; had some conversation with her to endeavor to find out who committed the murder. Asked her if she knew the person who was in the room on that night with Miss Jewett. She told me that she knew him by the name of Frank Rivers. Asked her if she thought that that was his right name, and she told me that she did not know whether it was or not; asked her if she knew him in case she should see him, and she said she would not by daylight. He had not visited the house more than four or five times, and that when he came he wore a cap, and covered his face with a cloak so that she would not be able to recognize him if she saw him; she had no opportunity of seeing his face, and

should not know him if she met him in the street. This was said in the presence of some of the girls; presume that every girl in the house was in the room at the time. There were six or seven there. She said that he went upstairs into Helen Jewett's room; that there was a bottle of champagne called for, which she (Mrs. Townsend) carried up. Asked her if she had an opportunity of seeing him when she took the wine up, and she said that she had not, as Helen took the wine from her at the door, and she immediately afterwards came down stairs; asked the girls who were sitting round, collectively and individually, if any of them knew the young man. With the exception of one, they all replied that they did not.

*Cross-examined.* There were other men in the room besides myself when the conversation took place—Mr. Secor and Mr. Lane. She did not say that she saw any person in Helen Jewett's room. She said she let a person in that answered to the name of Frank Rivers. I understood her that he always came in the door with his cloak up to his face, and that this was the way he always came. She did state that she did not see his face and that she could not swear positively that it was him. Inquired of her where this Frank Rivers lived. Her answer was that she did not know. Miss Stevens stated that she knew that he attended a dry goods store in Pearl street, a few doors from Chatham, and that if it was a week day she could find him in a few minutes. They all said that they did not know him by any other name than Frank Rivers.

Upon getting this information, I went in company with Mr. Lane, a watchman, for Mr. Brink. We went to his house and called him up, and he came after us; did not know Mrs. Townsend before this; was not in court when she testified. Only knew that the person I spoke to was Mrs. Townsend because she appeared to be the mistress of the house, and the girls in the house called her by that name. She did not say a word about the lamp having been lit in the entry when she let Frank Rivers in; she did not say that she saw Frank Rivers' face by the light of the lamp when she let him in, nor say anything about seeing a person in the room when she let him in, nor about the door swinging open towards the wall when she took the champagne up, nor about the light in the room, or where it was standing.

She went on to say what she did when she discovered that the back door was open; that when she first observed the light, she did not go immediately down to see about it, but a few minutes afterwards she went to see about it, and she thought that some of the girls had gone into the yard; opened the door and called to see if any person was in the yard; she called two or three times and got no answer; she then took a light and went up stairs to Maria Stewart's door, which she found locked. From there she went to Helen Jewett's room and opened the door, when the smoke burst out upon her face. When I first went into the house found Mrs. Townsend standing on the platform of the stairs near Helen Jewett's door. Found the watchmen there—

Gardner, Van Norden and Hall. Mr. Van Norden let me in; the fire was not quite extinguished when we got to the house, but it was not blazing.

To *Mr. Maxwell*. Am a charcoal inspector as well as a watchman; have lived in New York twelve years; have been a city watchman since October last; have had no conversation with

Mr. Hoxie, Mr. Robinson, Sr. (the father of the prisoner), or any other of his friends or relations, in relation to this affair; have no other motive in coming here to testify than to speak the whole truth; the room in which Maria Stevens slept was only divided from Helen Jewett's room by a thin partition of lath and plaster.

*Mr. Maxwell* asked Mr. Phenix if he had Maria Stevens in attendance among his witnesses for the prosecution. *Mr. Phenix* replied that she was dead, that on the morning of the murder she caught a severe cold which resulted in her breaking a blood vessel, and that she died a few days since; had she lived she would have been a most important witness for the prosecution.

*Mr. Collyer*. Maria Stevens is the girl who informed me that she knew who Frank Rivers was and where he lived. She said that on one occasion she had played at cards with him.

*Rosina Townsend* (recalled). Know a colored girl named Sarah Dunscombe; she told me that Frank Rivers had been in Helen Jewett's room on the Thursday preceding the murder; do not believe that I said positively that Frank Rivers (Robinson) was at my house on the Thursday preceding the murder; think that I said it was on the Wednesday or Thursday preceding. If Sarah Dunscombe said that it was Thursday I should be inclined to believe her; think the prisoner was at my house on the Thursday preceding the murder, but am not certain; it might be on the Wednesday preceding; Maria Stevens' room was adjoining Helen Jewett's; she died on Wednesday week last at the house of Mrs. Gallagher.

*Mr. Maxwell*. Have you heard of any man having committed

suicide since the murder who was in your house on the night of the murder?

*Mr. Phenix* objected.

The COURT overruled the objection.

*Mrs. Townsend*. I never heard of such a suicide.

To *Mr. Phenix*. Mentioned the circumstance of the white mark at the back of the prisoner's head before I saw an account in one of the newspapers of his having his head shaved while in prison; saw a watch and chain and ruby ring that were found in Helen Jewett's room; one of the watchmen brought them to me and I afterwards delivered them to the coroner; I know of nothing else found in Helen's room except her books and clothing; a box of things was afterwards brought to me that I understood belonged to Helen Jewett, to be taken care of; did not tell any watchman, or any other person on the morning of the 10th April that I did not see the face of Frank Rivers when I let him in; don't know

a watchman named Collyer; did not to my knowledge state anything to any watchman or any other person in relation to the murder, different from what I stated on my direct examination; did not tell any watchman that I found a lamp lit in the entry, standing upon the floor near the back door.

To *Mr. Price*. Am positive that I did not converse with any watchman on that morning; I called them in to assist in extinguishing the fire. Last Thursday, Friday and Saturday I spent the principal part of my time in the grand jury room in the building across the park; was in company with the ladies there—Miss Salter, Miss French, Miss Johns, Miss Caroline Stewart, Miss Elliott and Miss Brown. The colored girl, Sarah Dunscombe, was also with us. During those three days no one came to us except one person on one evening to converse with us about the trial. Have heard Sarah Dunscombe say she thought Frank Rivers was the person who was with Helen Jewett on Thursday. The girls and I have dined together every day except one during the progress of this trial. Since Sarah Dunscombe left my house, until the commencement of this trial, have not seen her.

To *Mr. Phenix*. Have been requested not to hold conversation with any one in reference to this affair, and I have invariably observed the injunction, and when the girls have spoken to me, I begged them not to do so. All the girls who were in my house at the time of the murder remained there until the Monday following.

*Oliver M. Lowndes*. Am a police magistrate; conducted the examination in conjunction with the coroner at the coroner's inquest held upon the body of Helen Jewett.

Rosina Townsend and Sarah Dunscombe were present at the examination. Rosina Townsend stated in her examination, in reference to the voice which she heard at the door on the Saturday night, that she knew it to be Robinson's, on receiving the second answer. If she had not known it to be his, she said, she would have opened the window to see who it was, before opening the door; do not recollect she said a word about Bill Easy's voice, or even mentioned his name; in some of my conversations with Rosina Townsend she stated that she believed Robinson was at her house on the Thursday night preceding the murder; am not certain she stated this under oath. Not a word was said by her about the bald place on Robinson's head. She stated that Robinson was lying in bed when she went up with the champagne, on his side, with his book a little raised on his elbow; that there were two lights in the room, a lamp on the mantel piece, and a candle by which he was reading. She stated that when she took up the champagne she remained but a few moments—as she had no business to remain there.

Sarah Dunscombe in her examination stated that Robinson was with Miss Jewett on the Thursday preceding the murder; understood Mrs. Townsend in her examination as confirming her statement. Sarah Dunscombe described a person being with Helen Jewett on Saturday eve-

ning (the night of the murder), between five and six o'clock; that person turned out to be Mr. Strong, who has been examined as witness here, but from the positiveness with which Sarah stated that it was Robinson, I was at first led to believe that it was him. She said that the person she referred to sat in Helen Jewett's room, upon a chair near the bed, with Helen Jewett upon his knee, and that his position was such that she could not see his full face. Sarah stated that on Friday morning Helen Jewett showed her a portrait and asked her if it was not a good likeness of the person who was there on the evening previous (Thursday). This was Robinson's portrait, and Sarah said that it was a good likeness. She stated that the person who was with Helen on Saturday was the same person who was with her on Thursday, and on Robinson's being pointed out to her at the coroner's inquest, she identified him, as she had seen him at both times.

To *Mr. Phenix*. When Rosina Townsend was examined at the police office she was under oath. Sarah Dunscombe was also examined under oath. Some questions were put, and answers given on examining Mrs. Townsend and Sarah Dunscombe at the police office, but were not written down because they were considered to be irrelevant, immaterial; discovered a number of letters in Helen Jewett's room on the morning when the murder was discovered; read one letter in the room which I could again identify. The carrier took a number of letters away from the room which he subsequently

brought to me. After they were placed in my possession, I took them home and read the most of them. A bureau and two trunks were brought from Robinson's room to the police office without the knowledge or authority of Mr. Hoxie, but Mr. Hoxie was present when the contents were examined.

*Rodman G. Moulton*. At the time of the murder of Helen Jewett, I lived at No. 42 Dey street, in the same house with the prisoner. On the Thursday evening preceding the murder, I came to the house by 7 o'clock, and there saw the prisoner. I remained in his company from that until between 12 and 1 o'clock, until he went to bed. We went to the theater on that night; this was on the 7th of April. The "Maid of Judah," and the "Dumb Belle" were the pieces represented there that night.

*Cross - examined*. Cannot swear positively whether he went with me to the theater, or whether he met me in John street. We were both in the theater when the curtain rose. We remained there from the commencement until the end of the performance. We went into the pit until the first performance was over, and then we went into the boxes; do not think we discovered any person in the pit on that night we spoke to. Saw no person in the third tier that I was acquainted with; knew Helen Jewett by sight. She was at the theater on that night. I saw Robinson talk to her on that night; we had met on former occasions, to go to the theater, at Mr. Parker's coffee room in John street; cannot say

whether he had on a cloak, on the night we were at the theater; have seen him wear a cloak, not as many as a dozen times. A blue cloth cloak. It had a collar and facings of black velvet. There were cords and tassels attached to it.

(The cloak found in the rear of Mrs. Townsend's house was shown to the witness, and he stated that it was in every respect of similar appearance to that worn by Robinson, but he would not positively swear that it was the same.)

Have never seen the cloak that Robinson wore since the murder of Helen Jewett. I do not know what became of his cloak. I have been out sleigh-riding with Robinson on two occasions; do not know that he had a quarrel with any one either of these times. He wore his cloak on both occasions; Robinson had a night key to get into his boarding house. All the boarders had night keys. I have been at the house kept by Rosina Townsend; was there on the evening the murder was committed in company with Mr. James Tew; do not know by what name Mr. Tew was known there; never, to the best of my recollection, heard him called Frank Rivers. A female let us in there; don't know her name. I did not then know Mrs. Townsend; had been to her house twice before the murder of Helen Jewett. I know Elizabeth Salters by name. I saw her on that night in the entry. I did not speak to her. Mr. Tew went in with me. He had some conversation with her in the entry. We did not go up stairs. During one of our sleigh rides, Robinson informed me that he

had lost one of the tassels of his cloak. On the night that the murder was committed we took tea at our boarding house at about seven o'clock—that was the hour we generally took it; did not wear an overcoat on the night I went to the theater with Robinson. Robinson did not stop any where before we went into the theater. We both went directly into the pit.

*Thomas Garland.* Am one of the city watchmen. I was stationed on the corner of Thomas and Chapel streets on the Saturday night preceding the murder of Helen Jewett. On Sunday morning about twenty minutes past eight o'clock I heard an alarm from a house in Thomas street.

Was the first watchman who entered that house. When I first entered I saw two men in the room on the right of the entry in company with Mrs. Townsend. From their attitude and appearance, and from their being in their shirt sleeves, took it the men were going to fight, and I went to the front door and gave an alarm rap. When I first entered Mrs. Townsend told me that there was a girl murdered in the house, and the room was set on fire. I got the assistance of two watchmen, and we all three went up stairs. About ten minutes after my first entering the house I caught a young man in my arms who was standing near the door of Helen Jewett's room. He was undressed. It was dark when I caught him in my arms. After I had been in the house, I saw a female come out of one of the up stairs rooms, having in her hand a hat and band box; she went down stairs

with them, and I did not see anything more of her, or of the young man that I got hold of. As soon as I and the other watchmen got into the house I told Mrs. Townsend to lock the door, and let no one come in or go out but watchmen. At this time there were four men in the house. Shortly afterwards discovered the first man whom I had seen had left the house. A number of watchmen at that time had come into the house. I went into the yard and looked into the cistern. The lid of the cistern was open. There was a step ladder standing by the cistern. If the step ladder was found in the rear of the yard in the morning, it must have been removed there after I saw it. It was very damp and cold this morning; found the murdered girl lying upon her stomach, with her back up, with a large cut in the side of her head. From the time that I entered Mrs. Townsend's to the time that I entered Helen Jewett's room, it must have been fifteen or twenty minutes. I was the first person that threw water upon the fire to extinguish the flames. There was no appearance of any water having previously been thrown upon the fire, or any other attempt having been made to extinguish it.

*Cross-examined.* Mrs. Townsend was standing at the door of the room on the right side of the entry when I went in, and the two men were standing inside; thought that they were going to fight because they had their coats off; don't think that it was one of those very men that fetched water for me; I think it was a female; don't know that it was

Mrs. Townsend; when I went up stairs, Mr. Hall followed me with a light, and Mrs. Townsend followed him; only saw two men in the house when I first went in—then I saw the other in the entry. I took hold of the man in the entry and did not let go of him until both he and Mrs. Townsend told me that he did not belong to Helen Jewett's room. After that I found another man, making four in all, that I found there; don't know where they all went to or what time they got away. I did not see the young man that I found in the entry after I let him go. I did not stop in the room where the fire was burning until I thought it was out. While I was in the room there was a handkerchief found by Mr. Collyer. It was between the pillow and bolster of the bed upon which the murdered girl was laid; kept it in my possession, except showing it to a person who was standing near me. At this time some girls had come into the room, and one of them remarked "this is Frank's handkerchief;" gave it to Mr. Noble, the assistant captain of the watch.

*Jared L. Moore.* Am a jeweler and watchmaker; received a watch this morning from Mr. Hoxie. That watch was bought of me by Mr. Hoxie in March, 1834. (The watch was here exhibited, and identified as being the same that Mr. Furlong swore he saw in possession of the prisoner, on the evening of the 9th of April last.)

*Mr. Hoxie* (recalled). The watch exhibited is the same that I bought for the prisoner.

*James Tew.* Am a clerk. Boarded at the same house with



the prisoner, No. 42 Dey street at the time of the murder of Helen Jewett. Saw him at his boarding house on the Saturday night preceding the discovery of the murder. We had tea together about seven o'clock, and we went out about half an hour afterwards; walked out in company with Mr. Moulton and Robinson was with Mr. Tyrrell. We walked a little ahead and missed them on the corner opposite the American Museum. He wore a cloak on that night. He had had that cloak about two months before that; understood that he got the cloak from a young man named William Gray, as security for money that he had loaned to Gray. On Saturday night, the 9th of April, returned to bed about a quarter past eleven o'clock. I occupied a front room on the first floor of the house, No. 42 Dey street; Robinson was my room mate, and he occupied the same bed with me. We occupied the same bed together on the Saturday night preceding the murder. I went to bed first; awoke during the night; cannot say what time it was when I awoke. Had no light, or means of judging except from mere guess. As well as I can tell, it must have been between one and two o'clock; then found the prisoner in bed with me. It was not at all unusual for me to go to bed before him. A second time during the night I awoke between the time that I first awoke, and the time that the officers came to our room in the morning. I think it must have been between three and four o'clock when I awoke the second time. I did not look at my watch and had no means of judging except

from guess. Robinson was in bed when I awoke the second time; was awake when the officer came to our room in the morning. Robinson had a particular place for putting his clothing. He generally hung them over the testor of the bed; saw nothing unusual in their arrangement or the manner in which they were laid when the officers came into our room. On the Sunday morning heard a knock at the street door. The servant went to the door and I heard some inquire if Robinson was within. As Robinson, I thought, was asleep, I got up and opened our room door, and told the servant that if any one wanted to see Robinson to tell them to come up to our room, as he was in bed. Two men then came in, and as I was getting into bed again, I shook Robinson and told him that two persons wished to see him. He awoke and they asked him if his name was Robinson, and he replied that his name was Robinson. They then told him that they had something to say to him, and he asked them if it was necessary for him to get up; if they could not say what they had to say to him while he was in bed. One of them replied that he wished to see him in private. He got up, partly dressed himself, and went into the hall from the room; the hall with the persons who were there. Did not hear anything that was said. Robinson returned to the room and finished dressing himself; he told me that the men wanted him to go with them, and he asked me to go with him. I replied that I would; he then asked the men if I might go, and they said that they had not any ob-

jection. Before I got out of my bed, I called him to the side of the bed and asked him in a whisper, what was the matter. He replied that he did not know; he said nothing to me that any person could not hear. From the time I first awoke him to the time we went out, did not notice any confusion or emotion in him different from anything that I have always noticed in his conduct. We proceeded with the men in a carriage which they had at the door to the house of Mrs. Townsend. When I got into the carriage it was raining very fast. I remarked that the rain would clear the ice out of the river. Robinson, I think, joined in this conversation. Up to the time of our arriving at Mrs. Townsend's, I witnessed nothing in his conduct indicative of guilt; remained at Mrs. Townsend's house until about twelve o'clock. Believe he was taken up into the room where Helen Jewett was laid, but I am not certain of this. I did not see him immediately after he saw the body.

To the JUDGE. Think Robinson was asleep when the officers came to our room.

To *Mr. Marwell*. When we took tea on the night before the murder, Robinson and I and Mr. Moulton made arrangements to ride out on horseback before breakfast on the following morning. Got up shortly before the time proposed to go out, and finding it wet, told Robinson that we could not go. He agreed with me and said that it would be of no use to awake Moulton. At the house of Mrs. Townsend Mr. Noble asked Robinson if some white marks which he observed on his pantaloons were

whitewash, and Robinson told him "no, that it was paint."

Was at the house of Rosina Townsend the Saturday night preceding the discovery of the murder of Helen Jewett. From the time that I lost sight of the prisoner, near the American Museum, on the evening, up to the time I found him in bed, at one or two o'clock in the morning, did not see or meet him.

To the JUDGE. Was not awake when the prisoner came in on the Saturday night, nor did he awake me. Have no positive means of knowing what hour it was, when I awoke spoke to the prisoner, and asked him what time he came in. He replied between eleven and twelve.

*Cross-examined.* The prisoner had a night key to get into the house at any time in the night he pleased. I have known him to come home frequently after I went to bed, and I suppose, after other persons went to bed; have known the prisoner to come home late at nights, but cannot say that he was in the habit of it.

Think the prisoner wore a black frock coat on the Saturday night, but am not certain; do not know what sort of pantaloons he then had on. When the officers came to our room in the morning, he put on a pair of drab mixed pantaloons, am not certain they were the same pantaloons that he had on when I left him at the American Museum.

To the JUDGE. Did not observe on Saturday night that Robinson had any paint or whitewash upon his pantaloons, because I did not notice his pantaloons. I did not observe anything of the kind before we got to Mrs. Townsend's. Mr. Noble

asked Robinson, what is that on your pantaloons; is it white-wash? My attention was then called to it. Think he then had a frock or surtout coat on, a double breasted coat, with two rows of buttons in front. When Mr. Noble called Robinson's attention to his pantaloons, observed there was a white mark on the left side of the right leg, below the knee. Never stated that the white upon the prisoner's pantaloons was paint; have never said, at any time, that Robinson told me he came home at a different time from what I now state; have not sworn before the grand jury that Robinson told me he came home at twelve or half-past twelve o'clock on Saturday night. Cannot say how often, prior to this affair, I had been to Mrs. Townsend's house; had been there several times. Was known at that house as Frank Rivers; was frequently called by the persons in the house as the cousin of the other Frank Rivers (the prisoner). When I was so

called I never denied it. When I was there on Saturday preceding the murder, I neither saw her, nor made any inquiry after Helen Jewett; saw no cloak in our bed room on the morning that the prisoner was arrested of the description that he was accustomed to wear. When we started from our boarding house together, on the Saturday night, prisoner did not tell me where he was going. When he left home on the Saturday evening, it is my impression that Robinson had a quantity of cigars in his room; I cannot tell how many he had. He and Moulton had a box between them; cannot say whether or not there were any left in the box on the Saturday afternoon. I think I have seen Mr. Robinson write; I cannot say how often. I am not acquainted with his handwriting; could not tell his handwriting from his cousin's—Mr. B. F. Robinson—the young man who has gone to England. Cannot exactly say whether Robinson kept a journal or not.

*Mr. Maxwell* stated that he thought the District Attorney had disclaimed any intention to go into the subject matter of the letters, papers, books and memorandum found in the bureau and trunk of the prisoner after his arrest. *Mr. Phenix* said that if it displeased the gentleman—and rather than they should think that their client had not had a fair trial, and had not been liberally dealt with—he would forego any interrogations in reference to these matters.

*Mr. Tew.* Prisoner generally wore a hat in the day time and a cap at night; think I have seen him wear a hat in the night time. Did not hear any charge made against the prisoner while in the carriage, on our way to Rosina Townsend's. Did not hear Robinson say to the police officer that he was at home, at

his own house on Saturday night between nine and ten o'clock; had no conversation with Robinson before the officers came in the morning. Did not go to sleep again after getting up and looking at the weather.

To *Mr. Maxwell.* On the Saturday night preceding the murder, I went to Mrs. Townsend's

between nine and ten o'clock; think it was near ten o'clock.

*William B. Townsend.* I was foreman of the grand jury that presented a bill of indictment against the prisoner for the murder of Helen Jewett. Asked Mr. Brink, if, when he first accosted the prisoner, he gave any indication of embarrassment or guilt, or if he did anything that made any impression upon his mind, in relation to whether he was guilty or innocent. He said that while in the coach, after turning up Broadway, he told him that a dreadful crime had been committed. I asked him what impression, in telling him this, had been made upon his (Brink's) mind. He said in the first place, his impression was, that he was guilty—in the next place, he thought he was innocent; but, on the whole, after mature reflection, he thought he was guilty; cannot be mistaken that this was his answer.

*Cross-examined.* Don't remember that Brink swore before the grand jury, that Robinson did not betray any emotion of guilt until passing the police office. Mr. Tew swore before the Grand jury that he went to bed between eleven and twelve o'clock, and that he (Tew), and Robinson went asleep together shortly afterwards.

*John Blake.* Am treasurer of Park Theater. The Maid of Judah and the Dumb Belle were the pieces performed at the Park Theater on the night of Thursday, the 7th of April. These pieces occupy about four hours in their performance. The Woods sung in the opera of the Maid of Judah, and it occupied a little longer when they performed

than on ordinary occasions, as their songs were frequently encored.

*William H. Lane.* Am a city watchman; was on my round in the neighborhood of Thomas street, on the night of 9th April. Heard the alarm rap given by a watchman from the house of Mrs. Townsend, No. 41. Immediately went there and found several persons there. Mrs. Townsend said that she believed Frank Rivers was the person who had been with Miss Jewett on the night before. Mr. Collyer asked her if she knew him, and she said that she did not, only by his voice, as he always came into the house with his face muffled up in his cloak. There was some other conversation between Collyer and Mrs. Townsend. She said that there was a bottle of champagne called for. She carried it to the room door and delivered it to the girl (Helen Jewett). She saw somebody in bed when she went up with the champagne; that she thought Frank Rivers had murdered the girl, but that she did not know him, nor would she know him if she met him in the street, as he always came to the house closely muffled up.

*Mr. Brink* (recalled). Have a pair of vases in my house; bought them two years ago; bid for a pair of vases at Mrs. Townsend's, and bought them; but I bought them for another man; bought them for Mr. Tompkins, the police officer; cannot say why I forgot the vases when I gave my testimony on Saturday. I did not think of them, that's certain; bought the clock in my own house, and got Welch to pay for it. I think I told the auc-

tioner that Welch and I and Rosina would settle for the things that we bought.

**ALDERMAN BENSON.** Now recollect, sir, you are under your oath. Did you, or did you not, pay for the vases that you bought? Upon my honor, sir, I cannot recollect.

Is it not a fact, sir, that there was an understanding between you and Welch and Rosina, that you were not to pay for anything you bought at the sale? There was no such understanding.

Now, sir, you have sworn that you paid for the clock; did you do so? It was settled for, sir, by Welch; you had better ask him about it.

**Mr. Maxwell.** No, sir; we want an answer from you.

**Mr. Brink.** All I can say, sir, is that all I got I expect was settled for. I and Welch were employed to attend Mrs. Townsend's house at the sale, and one or two days after the murder.

**Rosina Townsend** (recalled). There was a clock sold at my sale for thirty dollars. Mr. Brink, I believe, bought it. There were two vases which he also bought. I think for eight dollars. Mr. Welch bought some small pictures. The auctioneer never received any money for them. They settled with me for them; don't believe they ever paid me any money, but we squared accounts any way. I gave them five dol-

lars a day for their attendance and services.

To **Mr. Phenix.** Had officers in attendance at my house because of some threatening letters I received in reference to my giving testimony against Mr. Robinson for the murder of Helen Jewett. I gave them five dollars a day, and would have given them more if I could have afforded it. Sometimes they were at the house both day and night, and sometimes all night; do not consider that five dollars per day was too much for the services of the officers; I would have given more if I could have afforded it.

**Dennis Brink** (recalled). Did say that I paid the auctioneer, or settled with him for the clock that I bought at Mrs. Townsend's. I now wish to correct myself.

**William Schrueman** (recalled). When the cloak was found in the rear of Mrs. Townsend's yard, it was damp, as if it had been lying upon the ground some time.

To **Mr. Phenix.** Heard of a watch and gold chain having been found in Helen Jewett's room, and I got them from Mrs. Townsend; have a clerk, George Runyan; he attended with me the coroner's inquest upon the body of Helen Jewett; there was a box of books and papers brought for safe keeping to me by one of the police officers from Rosina Townsend.

#### IN REBUTTAL.

**Daniel Lyons.** Am the keeper of Bellevue prison; remember Mr. Furlong calling to see the prisoner. He told me the ob-

ject of his visit and said that he suspected that he would be a witness for him if he was the same man that he supposed he was;

that he had read a description of him in the newspapers, and he expected that he was the same young man who had been in his store on the Saturday night preceding the murder. He said that he (Robinson) had been in his store and that they compared watches at ten o'clock. When he saw Robinson, he went up to him and reminded him that he knew him; said that he had seen him in his store on the Saturday night before the murder, and remembered his buying a half dollar's worth of cigars. Robinson said that he remembered it, and he thanked Mr. Furlong for the trouble that he had taken in his behalf, for the purpose of identifying him, and for his good wishes. Mr. Furlong on leaving told me he was the man he had expected, and that he should volunteer his testimony to Mr. Hoxia. Robinson had his head shaved while he was in prison; the first time that I noticed anything particular about Robinson's head was when a young lady was with him, and she said Richard, or Dick, how thin your hair is getting behind; I looked at his head then, and observed a bald spot on the back of his head.

To *Mr. Hoffman*. Know that previous to Robinson having his head shaved, his hair came out continually; he was advised by Doctor Allen, a surgeon attached to the prison, to have his head shaved; did not find out that the barber had been called in until he got half through with the operation, and I was then very angry in relation to it. Thought it was calculated to injure me very seriously; did not see the bald place in Robinson's head until nearly a week after

his arrest, and I know that when you heard of it you were very angry, fearing that it would militate against the interests of the prisoner, and said that nothing should be done without consulting counsel.

To *Mr. Phenix*. Don't exactly know who the girl was that was with the prisoner when she remarked upon the bald spot on his head; she observed, after noticing the place, "never mind, Dick, I will put a patch upon it some of these days."

*Henry Burnham*. I am deputy keeper for Bellevue; Mr. Furlong was admitted by me to the prison to see Mr. Robinson; Robinson had been at Bellevue three or four weeks when Mr. Furlong first came; he did not bring any order or request for admission when he came; he said he came to see if he could recognize Mr. Robinson as the person who was in his store buying cigars on the Saturday immediately prior to the murder; went with him to Robinsons' cell; Robinson was lying down and as soon as we went in he got up; Mr. Furlong said to him, "how do you do, Mr. Robinson," and he answered "how do you do, sir," and shook hands with him. Mr. Furlong then told him that he thought he had seen him in his store on the Saturday before the murder. Robinson replied that if he had anything to say he had better speak to his counsel. Nothing further of any importance was said by either of them. I think I mentioned these circumstances to one or two of the police officers; saw Mr. Furlong at the prison about a week after the time he first called.

*Cross-examined*. Knew Mr.

Furlong at the time he came to the prison. He said he wanted to see if Mr. Robinson would recognize him. Did not notice any bald place on the prisoner's head. If there had been a bald place, I must have seen it. Almost four weeks after he came to the prison, his hair began to come out, especially on the left

side of his head, and when Dr. Allen passed his hands through his hair it came out in clusters; it is about three weeks since Robinson's head was shaved.

To a *Juror*. Have the utmost confidence in Mr. Furlong's integrity and oath; I have known him for eight years, and I never knew anything of him but good.

*Mr. Phenix* proposed to read the four letters that had been proved, as having been found in Helen Jewett's room, written by the prisoner at the bar to the deceased. Two of the letters were dated in August, 1836, one without date, and one dated in November.

*Mr. Hoffman* objected. The COURT overruled the objection.

*Mr. Maxwell*. The obvious intent of submitting the letters as evidence against the prisoner was to show that he had at some distant period entertained malignant feelings towards the deceased, and had, on one or two occasions threatened her with injury. If such threats and such letters had not been written immediately antecedent to the murder they ought not to be made use of to prejudice the mind of the jury against the unfortunate accused, I appeal to the well-known magnanimous and benevolent feelings of the District Attorney, and to his mercy and sense of justice, to withdraw the proposition he has made.

*Mr. Phenix* said that it was his sense of public justice and in obedience to the oath he had taken as attorney for the People, that he was induced to urge the proposition he had made, and he did so with feelings towards the unhappy prisoner at the bar, far from being harsh, unfriendly or unkind. Inasmuch, however, as there were some circumstances detailed in the letters referred to which related to other persons entirely unconnected with the prisoner, and an exposure of which would be calculated to do some serious injury, he would before insisting upon their being read, submit them to the court for their erasure of any particular which should by them be deemed as irrelevant and not pertinent to the issue on trial.

*Mr. Price* opposed their admissibility as testimony against the accused, upon the ground that they were calculated to prejudice his general character in the estimation of the jury, where no attempt had been made by the counsel in his behalf to sustain his good character and reputation.

JUDGE EDWARDS said that the majority of his associates were of opinion that the letters were not admissible.

June 7.

*Mr. Phenix* stated to the court that since the adjournment on the previous evening he had maturely reflected on the decision of their honors in reference to the admissibility or inadmissibility, as evi-

dence against the prisoner of the four letters which had been proved to be in the handwriting of the latter and which were found in the room of Helen Jewett after her murder, and he was firmly and decidedly of the impression—with all due deference to the opinion of the court, that the decision which had been given was founded on misapprehension or error. One of the letters (dated November 14, 1835) was of the utmost importance as regarded its connection with some material evidence that had been already adduced for the prosecution, and he begged, therefore, that the court would reconsider the proposition that had been made and deliberate upon it, and permit him, at all events, to introduce this document.

*Mr. Maxwell* said that to obviate any further difficulties in reference to this proffered testimony, and to avoid further discussion, he would, in behalf of the prisoner, consent to the reading of the letter which the gentleman deemed to be so important, if the gentleman would on his part, stipulate not to offer or read any others, and would permit the counsel for the defense to make use of the other three letters if they should deem it necessary or proper.

The *District Attorney* replied that he would willingly consent to the proposition of the learned gentleman. The COURT gave its consent to this arrangement.

*Mr. Phenix* read the letter. It was addressed to Miss Helen Jewett, at Mrs. Berry's, Duane street, and was evidently written in a disguised hand, notwithstanding that it was identified to be the prisoner's writing. At that time the deceased generally went by the name of Maria Benson, although she was known to some persons by the name of Helen Jewett. The following is the letter:

"Miss Maria—I think our intimacy is now old enough for both of us to speak plain. I am glad you used that expression in your note yesterday—'And as long as you pursue a gentlemanly course of conduct,' etc. I don't know on what footing I stood with you. Any deviation from the line of conduct which you think I ought to pursue, and I am blown. All of your professions, oaths and assurances are set aside to accommodate your new feelings towards me. Even this very letter will be used as a witness against me to avenge a forced insult, received at my hands. Poor Frank has a thousand insurmountable difficulties to encounter. Banded about like a dog, who as he becomes useless, is cast aside, no longer worthy of a single thought except to be cursed. No sooner extricated from one difficulty than he is plunged into ruin and disgrace by one who he had confidence in, one who professed attachment more sincere than any other, who swore to be true and faithful, and let all others be false, she would be my friend till death parted us. Oh, has it come to this, and she the first to forsake me, whom I so ardently endeavored to gain her lasting regard and love; then are all vows false, or Frank is indeed altered. He has but two wishes left, either of which he would embrace, and thank his Heavenly Father, with all the ardor of his soul, death, or a complete alteration and make me what I once was—'tis strange yet 'tis true.



"After reflecting on our situation all night, I arose this morning feverish and almost undecided, and so ill as to be able to attend to but a portion of my business of the day. I have now come to this conclusion, that it is best for us both to dissolve all connection. I hope you will coincide in this opinion, for you well know that our meetings are far from being as sweet and pleasant as they once were, and moreover I concluded from the terms of your last note that you would not regret such a step. I am afraid it will be the only way for me to pursue a gentlemanly course of conduct. In my opinion my conduct the last time I was at your house was far from being gentlemanly or respectful. I behaved myself as I should never do again, let the circumstances be what they might, even if I had to prevent it by never putting my feet into your house again. I was very sorry for it, and now I beg your pardon. I have done to you as I have never done to anybody else (in the case where other gentlemen are concerned). This, I hope, will be forgiven, as there's no harm done, and let the circumstances justify the act. H., as we are about to part, allow me to tell you my genuine sentiments.

"I have always made it a point to study your character and disposition; I admired it more than any other female's I ever knew, and so deep an impression has it made on my heart that never will the name and kindness of Maria G. Benson be forgotten by me; but for the present we must be as strangers. I shall call on you tonight to return the miniature and then ask you to part with that which is no longer welcome. That you should think I would use subterfuge to obtain the cursed picture, wounded my feelings to the quick, for God knows I am not, nor ever was as mean as that. Your note of Wednesday I never received that I am aware of. I would not insult you by leaving you to infer that another will receive my visits, for "Pius" I shall remain. Now I have only to say, do not betray me, but forget me! I am no longer worthy of you.

*"Ne ex memoria amitte et ero tuus servus.*

"Respectfully, Frank.

"November 14, 1835."

*Silas Bedell.* Am crier of the court; know the house No. 41 Thomas street; knew the premises before; two houses, which form the house as it now is, were joined together; have been in the house since it was joined in its present way, several times; the partition between the upstairs back room is, I believe, of brick; the house has a brick front, but I am not certain that it is brick in the rear.

*David L. Rogers, M. D.* (recalled). Was of opinion, when I

first saw the axe which was found in the rear of Mrs. Townsend's yard, that there was blood on it.

*Cross-examined.* It would be difficult for me to say whether the bruised appearance of the axe—the discoloration which appears upon it—is blood or rust. The places where I thought the blood was, was upon the back of the axe. When I was examined before respecting the axe, it was before the coroner's inquest.

## THE DEFENSE AGAIN.

*George D. Woole.* Am assistant secretary of Jefferson Fire Insurance Co. Mrs. Townsend had a policy on the furniture on the 9th of April last, to the amount of thirty-five hundred dollars. In June, 1834, the policy was only fifteen hundred dollars, and twelve months afterwards it was renewed for the large amount I have stated.

*Joseph Hoxie, Jr.* (recalled). We had part of our store in Maiden Lane painted on the Saturday preceding the murder; got some paint upon my clothes, and the prisoner also got some paint upon his clothes. The paint was white. The elbow of my coat was painted. The prisoner got some paint upon his trousers. He also got it upon the right leg, below the knee, and upon the left thigh near the hip.

*Cross-examined.* Don't know what time in the day we got paint on our clothes. I recollect the circumstances, because I got some spirits of turpentine to get

the paint out. Tried to get it out of his clothes, but could not, nor could I get it entirely out of mine. Am not very positive whether the paint was inside or the outside of the prisoner's trousers.

*Laban Jacobs.* I manufactured the hatchet now shown to me (the hatchet with which the murder was committed); know it, for we had a great number manufactured for us in 1834; my firm was then Latman and Jacobs, and our mark was L. & Jacobs. We had 2,500 manufactured for us in 1834, in Connecticut; the handles were put in here; know that by the handle.

*Cross-examined.* We sold a great many hatchets like that, and I presume that they are nearly all alike. They were sold in nearly all the hardware stores in the city. Know nothing about Mr. Hoxie having had such an axe as the one now presented.

*Mr. Phenix* offered to prove that the prisoner on being brought for examination before the police magistrates, refused to give any answer at all to any interrogatory put to him.

JUDGE EDWARDS stated that such testimony was altogether inadmissible.

*Mr. Phenix.* I was under the impression, if it please your Honor that I had a strict legal right to introduce this fact to the jury.

*Mr. Hoffman.* If it please your Honor, if the refusal on the part of my client to answer any questions that were put to him at the police office be a crime, it may be justly chargeable to me, for he acted entirely under my direction and advice.

*Mr. Phenix.* Some witnesses who had been subpoenaed on the part of the prosecution at the early part of the trial, and whose testimony would be very material, could not now be found, and I therefore am under the necessity of resting the case for the People.

*Mr. Price* elucidated the testimony, explanatory of the abstruse and seemingly dark portions of the evidence, illus-

trative of the infamous character and conduct of Mrs. Townsend, and her household, to the former of whom he imputed the probable perpetration of the murder. He swept away the inauspicious circumstances attending the paint on the pantaloons, the baldness of the head, the finding of the coat and hatchet, and attempted to show their deposit in the yard by other hands, than those of the prisoner. He spoke in the strongest terms of detestation of the infamous and abandoned course of life of Rosina Townsend, reaping her polluted resources, and supporting her wretched life by the prostitution of young and tender females, whom she had inveighed into her toils, to vegetate in vice of the most abominable kind, to wear out their lives in her odious service, and to die in misery and disgrace. One Maria Stevens, he said, who declared she knew the murderer, had since died in the brothel of Mrs. Gallagher, under circumstances of suspicion; and he protested in the strongest terms against reposing any confidence in the testimony of such a woman as Rosina Townsend, corrupt and rotten and abandoned as she was. He considered her incapable, from her deep depravity, of telling the truth in a case like this, where her own character and interest and safety were at stake. He spoke of her repeated contradictions of herself in her several statements made before the police, the grand jury, to other persons and here; and also exposed the discrepant statements of the black girl, and the other girls of Mrs. Townsend's family. He spoke of the presence of the prisoner at Mr. Furlong's store, for an hour after the time he was sworn to have been at Thomas street; and went on at length to attack and overturn by his arguments, the whole mass of testimony against the prisoner.

*Mr. Morris* replied fully to Mr. Price and contended strenuously for the guilt of the prisoner.

*Mr. Hoffman* addressed the jury with great energy and eloquence until after eight o'clock, having spoken fully three hours.

*Mr. Maxwell* read several authorities on the subject of evi-

dence necessary to work a conviction, particularly evidence of a circumstantial character, which he interspersed with appropriate observations, and illustrated by pertinent comments and remarks.

He concluded by submitting to the consideration of the Court the following propositions, viz:

1st. Every man is presumed to be innocent until his guilt be proved. The guilt charged must be proved to the exclusion of all reasonable doubt. 2d. No conviction can be had except upon proof of guilt. The mere preponderance of evidence will not warrant a conviction, unless that preponderance should convince the jury of guilt to the exclusion of all reasonable doubt. 3d. Circumstantial proof may be sufficient to convict, but to warrant a conviction, the circumstances proved ought fully to exclude the belief that any other person could have committed the crime. 4th. The proof in this case consists of coincident circumstances, but taken severally or united, they do not necessarily exclude the hypothesis, that some other person might be guilty of the murder, and if they do not, the prisoner ought not to be convicted. 5th. The coincident circumstances as proven, may create a probable ground for presuming guilt, but each and every circumstance, severally, or united, are no more than inconclusive probabilities, and do not warrant conviction.

*Mr. Phenix*, District Attorney, closed in favor of the prosecution after a patient and able argument of two hours.

#### THE JUDGE'S CHARGE.

JUDGE EDWARDS charged the jury at length, recapitulating the prominent parts of the testimony, and laying down the law for the guidance of the jury. He said that the jury, however, were as well the judges of the law as of the facts. That it was a principle of law as laid down by Blackstone, that it were better ten guilty persons escape punishment, than one innocent person suffer. He stated that if, after a careful and candid investigation of all the facts and circum-

stances of the case, they did not arrive at a full conviction, that the prisoner was guilty beyond all reasonable doubt, they ought not to convict him.

That this principle was to govern them throughout; and if all the facts and circumstances brought by evidence against the prisoner did not bring them to the conclusion that the guilt of the prisoner was established beyond all reasonable doubt, they were to be laid aside as insufficient for conviction. The jury were also to consider well the character of the persons brought forward as witnesses; the manner in which they testified; whether they were consistent throughout; and whether the facts they stated were in accordance with other facts indubitably established. In this case, the testimony principally is drawn, confessedly, from persons of very bad repute—from one of the most infamous houses in this city. When persons are brought forward who led such profligate lives, their testimony is not to be credited unless corroborated by testimony drawn from more creditable sources. The law therefore says, if testimony is drawn from persons of this description, in the judgment of law you are not entitled to convict upon it, but if it be corroborated and strengthened by other creditable testimony, then give it all the credibility to which it is in justice entitled. That there was a murder there can be no doubt—the question for your consideration is, was the prisoner at the bar the murderer? Your attention is directed to the circumstances connecting the prisoner with the crime with which he is charged. 1st. There is a cloak found in the yard; 2nd. The hatchet found in another yard, and 3rd, the miniature which was proved to be in the possession of the deceased on Friday, and was found after the murder in the possession of the prisoner on Sunday. These are the three facts to be relied on for connecting the prisoner with this transaction. First, as to the cloak, Mr. Tyrell testified that he saw it on the prisoner at half past seven or eight o'clock, and Mr. Furlong testifies that at half past nine o'clock he was at his shop without it. It must then have

been left at some place in the intermediate time. If he had been at Mrs. Townsend's house after he parted with Tyrell, he might have left it there early in the evening, and returned to Mr. Furlong's without it; or else he may have taken it home, and after he left Mr. Furlong's he may have gone and got it. The cloak, however, was found in the yard adjoining the house in Thomas street, spread out, where it was dropped by some person. Further, Mrs. Townsend testifies, as do also her girls to precisely the same facts, viz., that the prisoner came to their house at nine or half past nine o'clock, while Mr. Furlong testifies that he did not leave his store till half past ten o'clock. His Honor considered the statement of Mr. Furlong as the proper one to be relied on to the exclusion of those of Mrs. Townsend. How the cloak came in the yard, he, however, could only hypothetically account for. As to the hatchet, he said, it was sworn to by Mr. Hoxie's porter; it had been taken from the store on the Wednesday previous to the murder, found in the yard of Mrs. Townsend on Sunday morning with the string round it, and not missed by the porter until Monday morning. His Honor then attempted to furnish a satisfactory solution of this matter. As to the miniature, he stated the facts proved in relation to that; so with the fire, the discovery of the fire; the calling of the watch to extinguish it; the contradictory statements of Mrs. Townsend and her girls with that of the black girl, etc.; all of which circumstances he stated and commented upon with some severity, as regarded the females who testified; but he admitted that some of the circumstances were enveloped in a mystery difficult to be unravelled. His Honor's convictions were generally adverse to the credibility of the female witnesses against the prisoner. He concluded by charging the jury that if they entertained any reasonable doubt of the guilt of the prisoner, those doubts were the property of the prisoner, they were bound to acquit him; but if they were without a reasonable doubt of his guilt they should find him guilty.

## THE VERDICT.

At half past twelve o'clock the *Jury* retired to their chamber, and in about ten minutes returned into the court with a verdict of *Not Guilty*.

**THE TRIAL OF EZEKIEL DE COSTER, AN-  
DREW HORTON, HOSEA SARGENT  
AND OTHERS FOR RIOT, BOSTON,  
MASSACHUSETTS, 1825.**

**THE NARRATIVE.**

Some of the citizens of Boston having complained for a long time over the indifference of the authorities towards the number of houses of bad fame which were allowed to flourish in their midst, finally determined to take the law into their own hands. The leaders passed the word around that on a certain night they should assemble and proceed to wreck and pull down a certain particularly obnoxious dwelling house. The mayor, getting wind of the matter, called the city council together, which authorized him to do what he thought proper in the premises. So he had the constables all ready, and with them a number of good citizens who stood for law and order. About nine o'clock at night, receiving word that a mob had begun an attack on the place, he hastened there with his aides, made the crowd a speech, and succeeded in stopping the destruction, but not before the mob had badly damaged the building and by their threats, noise and tumult had frightened the residents of the neighborhood, many of whom had thought it necessary to close their own places of residence. The authorities subsequently turned the case over to the grand jury, which indicted a number of the crowd. After a trial which lasted several days, and in which a host of witnesses were examined, three of the chief rioters were convicted and sentenced to a term in prison.



# THE TRIAL.<sup>1</sup>

*In the Municipal Court, Boston, Massachusetts, August, 1825.*

HON. PETER O. THACHER,<sup>2</sup> Judge.

*August 10.*

The first count in the indictment set forth that Ezekiel DeCoster, Charles Jenkins, Thomas Jones, Barney Cook, Benjamin H. Boynton, Andrew Horton, Jonas Harrington, and Hosea Sargent, with fifty other persons, whose names were unknown to the grand jury, riotously assembled together on the 27th of July, to the disturbance of the public peace, and being so assembled riotously attempted to pull down and demolish an occupied dwelling house. The second count charged them with riotously assembling on July 27 to disturb the public peace and with making great noises, riot, tumult and disturbance for the space of two hours or more to the great terror and disturbance of all the good citizens.

The *Prisoners* pleaded *not guilty*.

*James T. Austin*<sup>3</sup> for the Commonwealth.

*E. Moore* and *Z. G. Whitman* for the Prisoners.

## THE EVIDENCE.

*Josiah Quincy*.<sup>4</sup> Am mayor of Boston; disturbances had occurred on the evening of the 25th and 26th July; information was brought to me that they were to be renewed on the evening of the 27th, and that it was intended to pull down and destroy all houses of bad fame in the city. I convened the aldermen, and was authorized to take such measures, as the exigence demanded. I ordered

peace officers, constables and watch to attend, and an efficient body of citizens, attached to order, volunteered to be in readiness to assist, provided they should be wanted. About 9 that evening I was notified that a mob had assembled, and that they were near to a noted bawdy house at the north end, and threatened its destruction and that the inmates had removed from it with their effects.

<sup>1</sup> *Bibliography*. Thacher's Criminal Cases, see 2 Am. St. Tr. 858.

<sup>2</sup> See 2 Am. St. Tr. 859.

<sup>3</sup> See 1 Am. St. Tr. 44: 6 *Id.* 672; *ante*, p. 337.

<sup>4</sup> See *ante*, p. 351.

I went to the spot soon after 9, accompanied with only two constables; was immediately admitted into the center, and was permitted to address the multitude. I urged them to desist from their unlawful purpose, and to retire peaceably to their dwellings. One man made a speech in reply, complaining that the law was full of delay, that it was not meted out equally, and that bad houses and their inhabitants were not duly prosecuted, and mentioned a case of his own. This speech was received with shouts, and stones immediately began to be thrown. I commanded silence, and made the proclamation for the persons assembled to disperse, and peaceably to depart to their habitations, or to their lawful business. Many hundreds were present, perhaps a thousand or more; they appeared to be very violent, and as they began to crowd upon me, I commanded the attendance of the constable and watchmen, and went myself for the efficient body of volunteers, who

were in readiness, and in an hour they were all upon the spot and in the midst of the tumult. I cautioned these volunteers not to use any violence. In the course of an hour or two quiet was restored, and the multitude dispersed.

A large number of witnesses were examined during two days. Many of them testified that the house had been assaulted with stones, the shutters and windows being broken, and that it seemed the intention of the rioters to pull down the building; that the noise was heard a great distance and drew multitudes to the scene and that the people living in the vicinity were in great terror, many of them closing their houses. They also identified the prisoners as being present and taking part, particularly De Coster, Horton and Sargent. The witnesses for the defense swore that they did not see the prisoners attack the house but saw them simply as spectators as they themselves were.

*August 12.*

**JUDGE THACHER.** Gentlemen of the jury: In the course of the trial, much has been said of the nature of this offense, and positions have been laid down by the counsel on which you may expect some advice from the Court. It is proper and commendable for the counsel in a cause to exercise all their learning and ingenuity in behalf of their clients. As your verdict is compounded of law and fact, and as you are bound to pronounce on both, I have not thought it proper to deny the counsel the right of addressing you on both, especially as the argument on the law may be considered as in fact addressed to the court. This, however makes it my duty to state to you with simplicity and candor, the principles of law, which I consider applicable to the case, and to leave it

to you to apply them to the facts in evidence, and to frame such verdict as you may be able to justify to your consciences and to your country.

The unlawful intention of the rioters, in both counts, is the disturbance of the peace; the unlawful act alleged in one is the destruction of a dwelling house, and in the other, the terrifying of the citizens by great noises from a tumultuous multitude. The act in each case is an unlawful one, and both counts describe a riot, at common law, and not against any particular statute of the commonwealth. A riot is a tumultuous disturbance of the peace, by three persons or more, assembling together of their own authority, with an intent mutually to assist one another against any one who shall oppose them, and afterwards putting their design into execution in a terrific and violent manner, whether the object in question be lawful or otherwise. Concert is essential, but it may be inferred from actions or from words. The intent must be to stand by, and to assist each other; but it is not incumbent that the government should give direct evidence of this previous concert; that may be inferred from the conduct of the parties at the time. They may act in concert, although they may be strangers to each other, and may not have had a previous conference or understanding on the subject. The object must be executed with circumstances of violence, calculated to inspire well grounded fears in reasonable minds. It was said by Lord Mansfield, in one case, "If people endeavor to effect an object by tumult and disorder, they are guilty of a riot. It is not necessary to constitute the crime that personal violence should have been committed, or that a house should have been pulled in pieces. If there be violence and tumult, it has been generally holden not to make any difference, whether the act intended to be done by the persons assembled, be of itself lawful or unlawful." The object will not justify the violence. In the eye of the law it is not material, whether the object is to pull down a bawdy house or the house of a virtuous citizen. If a man may by his own authority pull down a bawdy house, how soon would his pas-

sions hurry him on to destroy other houses, the residence of domestic peace, innocence and industry? He makes his own judgment and passions the rule to try, condemn and execute at the same moment. If this may be done, of what use is government and all its costly apparatus of courts and officers of justice. It is the duty of all good citizens to bring offenders to justice. If a man keeps a bawdy house he may be indicted for it. If individuals indulge themselves in habits of prostitution and debauchery, they may be apprehended and punished as offenders. The law is strong enough for all these things, and there is no need of violence to effect them. By peaceable means every nuisance may be abated. But when we depart from the straight legal course, we forfeit the protection of the whole social system. While we seek a right object in a lawful way, all the strength of society is pledged for our support; but the moment we seek even a right object in an illegal manner, the whole strength of society becomes arrayed against us. Another principle of law is applicable to this case. If a person, seeing others actually engaged in a riot, join himself to them, and assist them therein, he is as much a rioter as if he had at first assembled with them for the same purpose. It is not necessary to prove that he was the original author and instigator of the riot. If any person encourages or promotes or takes part in a riot whether by words, signs or gestures, he is himself to be considered a rioter, and is liable at the time to be arrested by any peace officer for a breach of the peace. And in this offense all concerned are deemed principal offenders. And it is said by Lord Mansfield, in a case of great interest, and after full deliberation, that "the mere presence may be an aiding. The number of persons present and inciting deters others from opposing; though the persons present and inciting may not do any particular and personal act themselves."

Having stated these preliminary principles for your assistance, you will inquire, first, whether any persons were guilty of a riot in the city on the 27th of July last, as stated in the indictment, and, secondly, whether the defendants or any of

them have been proved to you to have been guilty actors in that riot. First. To prove the existence and extent of the riot, you have the testimony of the mayor of the city. You are to recollect that the mayor of the city is placed at the head of its executive government, a place of great responsibility. By the terms of the charter it is expressly made his duty, to be vigilant and active at all times, in causing the laws for the government of the city to be duly executed and put in force, and to see that every subordinate officer of it does his duty. On the present occasion, he has come forward and stated to you all that he did, and all the motives of his conduct, in putting an effectual and immediate stop to what threatened to be a dangerous tumult.

The JUDGE then referred to the testimony of the witnesses as applied to each of the defendants, and instructed the jury to consider the case of each as though he were separately on trial, and to collect and compare the testimony with all candor to the accused and all fidelity to the public justice.

#### THE VERDICT AND SENTENCE.

The *Jury* retired to consider their verdict.

*August 13.*

The *Jury* returned into court and announced their verdict in these terms: Ezekiel De Coster, Andrew Horton and Hosea Sargent, guilty as charged; Charles Jenkins, Thomas Jones, Barney Cook, Benjamin H. Boynton and Jonas Harrington, not guilty.

JUDGE THACHER sentenced Sargent and Horton to three months' imprisonment in the county jail and De Coster to two months' imprisonment in the same place, all of them to pay the costs of prosecution.

**THE TRIAL OF DANIEL E. SICKLES FOR  
THE MURDER OF PHILIP BARTON KEY.  
WASHINGTON, D. C., 1859.**

**THE NARRATIVE.**

On the afternoon of February 27, 1859, the National Capital was thrown into a state of intense excitement when the news spread throught he city that Philip Barton Key,<sup>a</sup> a member of one of the leading families, a son of the author of the Star Spangled Banner, and United States Attorney for the District of Columbia had been shot and almost instantly killed on one of its principal avenues by the Honorable Daniel E. Sickles,<sup>b</sup> member of Congress from New York. The par-

<sup>a</sup> During the Revolutionary War two young Marylanders, John Ross and Philip Barton Key (born 1757), were put in charge of a Scotch relative, who, with his native prudence, that he might have a friend at court, whichever side won, obtained for Philip a commission in the British army in the West Indies. At the close of the war Philip Barton returned to the United States, settled at Annapolis, studied law, rose to eminence at the bar, became a member of the legislature and a judge of the Federal Court (1801), and a member of Congress (1807-13). He died at Georgetown, D. C., in 1815. John Ross received a commission in the American army, faithfully served his country through the war, married a daughter of Gov. Lloyd of Virginia, and lived on his estate until his death. His son was Francis Scott Key, the author of the national anthem, the Star-Spangled Banner, and his daughter, Phoebe, became the wife of Chief Justice Taney. The son of Francis Scott was Philip Barton, the victim in this tragedy. Young Key was at one time a member of the "Montgomery Guards." He studied law and practiced in Washington, D. C., and was United States district attorney for several years prior to his death. See Mackenzie's Colonial Families of U. S., 1907; Official Register, 1853-1857, Washington Star, Mar. 1, 1859.

<sup>b</sup> SICKLES, DANIEL EDGAR. (1825-1914.) Born New York City; educated at New York University; admitted to bar, 1844; corporation counsel N. Y., 1853; Secretary of Legation, London, 1855; member U. S. House of Representatives, 1857-1861, 1893-1895; at

ties were close friends and at the residence of Sickles in Washington, Key had been a frequent guest. His attentions to Mrs. Sickles, who was fifteen years younger than her husband, of Italian descent and of great beauty, had been remarked in society for some months. And on the Friday before, Sickles had received an anonymous letter stating that Key and his wife were in the habit of meeting at a house in the negro quarter which had been rented by Key for that purpose. Through a friend Sickles ascertained that this was a fact and on Saturday night, being confronted with the evidence, she made a complete confession to her husband of her guilt. The truth of this revelation was confirmed the next morning when, while Sickles was seated at the front window of his house he saw Key ride past and wave his handkerchief—the usual signal for an assignation. After dinner Sickles went out and had gone but a short distance when he met Key. Drawing a pistol and exclaiming “Key, you scoundrel, you have dishonored my home, you must die,” he fired three shots, all of which took effect upon the body of his victim. Key was carried into the club house opposite, where he died in a few minutes, and Sickles walked to the house of Attorney General Black,\* where he delivered himself into custody. Two months later he was tried for murder and was defended by three of the great lawyers of the country; James F. Brady, John Graham, both of New York, and Edwin M. Stanton, afterwards President Lincoln’s great war secretary. In eloquent language they sought to convince the jury that

beginning of Civil War raised a brigade of N. Y. volunteers and was commissioned Colonel; distinguished himself at Chancellorsville and Gettysburg; Brigadier-General, 1861; Major-General, 1862; minister to Spain, 1869-1873.

\*BLACK, JEREMIAH SULLIVAN. (1810-1883.) Born Somerset Co., Pa.; received a common school education; admitted to bar, 1831; Deputy Attorney-General Pennsylvania and Judge State District Court, 1842-1851; Judge Supreme Court Pennsylvania, 1851-1857; Attorney-General United States, 1857; Secretary of State, 1860; Supreme Court Reporter, 1861; counsel for President Johnson in impeachment trial (1868), and for Samuel J. Tilden before the Electoral Commission (1877).

their client was blameless for inflicting vengeance upon the destroyer of his domestic happiness. Their appeal was successful, for the jury returned a verdict of not guilty, and Sickles lived to become a Major General in the civil war, and a national figure for half a century.

### THE TRIAL.<sup>1</sup>

*In the Criminal Court of the District of Columbia, Washington, D. C., April, 1859.*

HON. THOMAS H. CRAWFORD,<sup>2</sup> Judge.

*April 4.*

On March 24th the grand jury returned an indictment charging Daniel E. Sickles with the murder of Philip Barton Key by shooting him with a pistol, in the City of Washington, on February 27, 1859. The trial began today, the prisoner pleading not guilty.

<sup>1</sup> \* "De Witt's 'Special Report.' Trial of the Hon. Daniel E. Sickles for Shooting Philip Barton Key, Esq. (U. S. District Attorney of Washington, D. C.), February 27, 1859. Preceded by an Introduction Giving Sketches of the Previous Career of Many of the Principal Personages Engaged in the Washington Tragedy. New York: Robert M. De Witt, Publisher, 33 Rose Street (between Duane and Frankfort Streets)."

\* "Opening Speech of John Graham, Esq., to the Jury on the Part of the Defense, on the Trial of Daniel E. Sickles, in the Criminal Court of the District of Columbia, Judge Thomas H. Crawford, Presiding. April 9th and 11th, 1859. New York: W. A. Townsend & Co., Publishers, 46 Walker Street."

<sup>2</sup> CRAWFORD, THOMAS HARTLEY. (1786-1863.) Born Chambersburg, Pa.; graduated Princeton, 1804; studied law in office of James Riddle, Chambersburg, Pa.; admitted to bar, 1807, and practiced in Chambersburg until 1829; member 21st and 22d Congresses (1829-1833); member State Legislature, 1833; appointed by President Jackson to investigate frauds in purchase of Creek Indian Reservation, 1836; and by President Van Buren as Commr. Indian Affairs, 1838-1845; judge of Crim. Court Dist. Col., 1845-1863. Died at Washington, D. C. See Livingston's Biog. Sketches Eminent Lawyers, 1852; Cyclop. Am. Biog. (J. H. Brown), 1900; Biog. Cong. Direct. (1774-1911), 1913; Princeton Univ. Gen. Cat. (1746-1906), 1908.



*Robert Ould,*<sup>3</sup> United States District Attorney, and *J. M. Carlisle,*<sup>4</sup> for the Government.

*James T. Brady,*<sup>5</sup> *John Graham,*<sup>6</sup> *Edwin M. Stanton,*<sup>7</sup> *Dan-*

<sup>3</sup> OULD, ROBERT. (1820-1882.) Born Georgetown, D. C.; graduated Jeff. Coll., Pennsylvania, and Columbian Coll., Washington, 1837; studied law with Joseph H. Bradley of Washington and Judge Beverly Tucker; graduated law dept. William and Mary Coll., 1842; admitted to bar Washington, D. C., 1843; appointed by President Pierce one of two members of bar of Dist. of Col. to codify laws of D. C.; district attorney (U. S.) until after the inauguration of President Lincoln. In following spring went to South. Assistant secretary of state to Secretary Benjamin; Confederate agent of exchange until the close of the Civil War. Arrested by Stanton at close of war, but soon released. Represented Richmond twice in Virginia Legislature; in senate in 1867 and in house in 1875. President of Richmond, Fredericksburg & Potomac Railroad, 1878-1881. Partner with Isaac H. Carrington, 1865-1882. Previously legal adviser to Confederate government. Died at Richmond, Va. See Off. Rec. Union and Confed. Armies; Richmond, Past and Present (Christian, W.), 1912; Richmond Daily Whig, Dec. 16, 1882; Wash. and Lee Univ. Cat., 1749-1888; Official Register U. S.

<sup>4</sup> CARLISLE, JAMES MANDEVILLE. (1814-1877.) Born Alexandria, Va.; when 11 years old removed to Washington, D. C.; educated at Catholic Seminary in old Capitol building and later in military school of Major Partridge; studied law under William Wirt, in Baltimore, Md., and under Richard S. Coxe, in Washington, D. C.; admitted to bar of Supreme Court (U. S.), 1837; argued cases as junior to Mr. Coxe and Mr. Bradley; his knowledge of Spanish and French brought him many cases involving Spanish and French titles; legal adviser of nearly all the Spanish-speaking legations, and in 1852 was regularly appointed "assessor," or legal adviser, of the Spanish and British legations, both of which positions he held until his death; counsel for Great Britain before the commission which sat in Washington under the twelfth article of the treaty of May 8, 1871; advocate for Spain before the mixed commissions sitting in Washington for Paraguay, Columbia, Costa Rica, Peru, Venezuela, Nicaragua, New Granada; also had large and important missions before the Mexican and other commissions. Formed a partnership (1863) with George E. Badger of North Carolina. In the Supreme Court his most important cases were the Prize cases in Black and the De Hare case, involving a large part of the city of San Francisco. Two of his best arguments were in the Court of Claims and in the Supreme Court on the effect of pardon and general amnesty in the Klein and Carlisle cases. Died at Washington. See Eminent and Rep. Men of Va. and Dist. of Col., 1893.

<sup>5</sup> BRADY, JAMES TOPHAM. (1815-1869.) Born New York City; was educated by his father, a prominent lawyer and judge; the son

iel Ratcliffe,<sup>8</sup> Samuel Chilton,<sup>9</sup> A. B. Magruder,<sup>10</sup> and Philip Phillips,<sup>11</sup> for the Prisoner.

became eminent for his forensic eloquence and success at the bar, especially in criminal cases; District Attorney, New York City, 1843; corporation counsel, 1845.

<sup>8</sup> GRAHAM, JOHN. (1821-1894.) Born in New York City, and the second son of David Graham, the elder. "He entered Columbia College under a special examination at eleven years of age, and was graduated before he was fifteen as valedictorian of his class. He began the study of law in his father's office, but the latter dying in 1839 he finished his studies with his brother David, and was admitted to the bar in 1842. One of the earliest cases of note in which John Graham appeared was with his brother in the defense of John S. Austen, a member of the Empire Club, for the murder of Shea. He also defended Donaldson. His first great case, which attracted the attention of the entire country, was the defense of Daniel E. Sickles for the killing of Francis Barton Key, in Washington, on February 27, 1859. . . . Another case of wide interest eleven years later was the defense of Daniel McFarland for killing A. D. Richardson in the *Tribune* office, November 25, 1869. During this trial he said: 'This is the third occasion within twelve years on which, although a single man myself, I have had the distinguished honor conferred upon me of upholding and defending the marriage relation. Within that period the three most exciting trials have occurred in this country which have ever occurred, and it has been my privilege to appear in every one of them.' The intervening suit was the Strong divorce case, in which Mr. Graham defended Mrs. Strong and established her innocence. Among other famous suits were the Arnold divorce case; the celebrated Hunt divorce case; the first trial of Tweed, the defense of General Alexander Shaler, and of Jaehne, the hoodle alderman. He occupied the place of prosecutor in a capital case but once. He argued the case of Rogers as state counsel, before the Court of Appeals, carried up on the question whether intoxication is as absolution for the crime of murder, and secured Rogers' conviction and hanging. He said afterwards: 'I have defended many a man for nothing to clear my conscience of the burden of sending Rogers to the gallows.' In 1850 he was a candidate for District Attorney, but being bitterly opposed by the elder Bennett, whom he attacked on the street, the campaign resulted in his defeat. He then resolved never again to be a candidate for public office. He was a member of the Law Institute, but refused to join any of the bar associations or social clubs and remained a bachelor. He was an eloquent speaker, but his great strength lay in the logic of his defenses and his boldness."

<sup>9</sup> STANTON, EDWIN McMASTERS. (1814-1869.) Born Steubenville, O.; graduated Kenyon College, 1833; admitted to bar, 1836; first practicing at Cadiz, then at Steubenville and Pittsburgh, Pa., removing to Washington, D. C. in 1856; Attorney-General United

April 7.

The selection of the *Jury* was completed today and the following jurors were sworn: Rezin Arnold, farmer; James L. Davis, farmer; John E. Neale, merchant; Wm. M. Hopkins, gents furnishings; William Bond, shoemaker; James Kelly, tinner; Wm. C. Harper, grocer; Henry M. Knight, grocer; Jesse B. Wilson, grocer; John McDermott, coachmaker; Wm. M. Moore, grocer; Alpheus S. Wright, cabinet maker.

States, 1860; Secretary of War, 1862-1867; Judge Supreme Court of the United States, 1869, dying four days after his appointment.

RATCLIFFE, DANIEL. Born Dumfries, Va.; practiced in Washington, D. C., several years; one of the editors of "The States-Union" until Apr. 29, 1861, when he was forced to leave Washington on account of war sympathies with the Confederacy. See Off. Recs. Union and Confed. Armies.

<sup>9</sup> CHILTON, SAMUEL. (1804-1867.) Born Warrington, Va.; studied law and practiced at Warrington; member Virginia house of delegates several terms; member 28th Congress (1835-1837); delegate to State Const. Con., 1850-1851; practiced law in Washington, 1855-60. Died in Warrington. See Lanman Biog. Annals Civil Gov. U. S., 1876; Biog. Cong. Direct. (1774-1911), 1913; Biog. Dict. of Va.

<sup>10</sup> MAGRUDER, ALLEN BOWIE. Nephew of John B. Magruder, brother of John Bankhead, and son of Thomas Magruder; admitted to bar Albermarle, Va., 1838; resided in Charlottesville, Va., until shortly before Civil War; removed to Washington, D. C., and practiced law there until 1861; subsequently removed to Frederick County, Md.; major, later colonel, asst. comm. prov. Confederate army; author of "Life of John Marshall." His daughter, Julia Magruder, was a novelist and writer, who died in 1907. See Woods (Edgar), Albermarle County in Va., 1901; Library South. Lit., v. 8.

<sup>11</sup> PHILLIPS, PHILIP. (1807-1884.) Born Charleston, S. C.; educated Norwich Mil. Ac., Vermont, and Middleton, Conn.; began study of law at Charleston; admitted to bar 1828; member "nullification convention," 1832, and voted with minority; member State Legislature, 1833-1835; removed to Mobile, Ala., and practiced law there; president Alabama Dem. State Con., 1837; member State Legislature, 1844, and was chairman of Committee on Federal Relations; president of "Internal Imp. Convention," 1849; delegate to "Baltimore Convention," 1852; represented Alabama in U. S. Congress (House), 1853-1855; declined re-election and resumed practice in Washington, D. C., until his death there. See Lanman Biog. Annals Civil Gov., 1887; Biog. Cong. Direct. (1774-1911), 1913.

## MR. OULD'S OPENING SPEECH.

*Mr. Ould.* Gentlemen of the jury: The indictment which has just been read to you charges Daniel E. Sickles, the prisoner at the bar, with the willful murder of Philip Barton Key. I shall narrate to you as briefly as I can the chief incidents connected with this tragedy, and as I believe the evidence will disclose them. The parties, I suppose, are well known to you all, at least by reputation, one being the representative in the Congress of the United States of a great commercial metropolis of the Union; the other, one who long and honorably filled the post of public prosecutor in this District, and perhaps in the hearing of several of you, he has discharged the duty which has today fallen to my lot.

The place where the crime charged in this indictment occurred was the city of Washington—the time, the 27th of February last. It was the Sabbath—a day which for more than eighteen hundred years has been set apart in commemoration of that divine mission which brought peace on earth and good will to men. In the soft gush of that Sabbath sunlight, at an hour midway between morning and evening did he commit his act. At a time almost when the echoes of the church bells were lingering in the air, the deceased all unconscious of the tremendous woe that was then suspended over his house, was met by the prisoner at the bar, on one of the thoroughfares of the city. He must soon have seen, from the attitude, movement, and all those evidences of deliberate intent, which rounded into completeness that scene of horror, that the prisoner intended some deed of blood. All unarmed and defenseless as the deceased was, he used all the feeble means that were in his power to save his life. How ineffectual they were even in delaying the terrible fate that overtook him, the evidence in this case will show. The prisoner at the bar had come to that carnival of blood fully prepared. He was a walking magazine. He was not only fully provided in the number of his firearms, but had also taken care to supply

himself with their different varieties, each one of which, doubtless possessed its peculiar excellence for the murderous work. To a nice and close calculator the contingency of an anticipated collision might call into requisition both Derringer and revolver. If before the time of meeting any such idea passed through the mind of the prisoner at the bar, as would seem to be indicated not only from the number and variety of his firearms, but from the temporary armory with which he was provided, to-wit, a convenient overcoat on an inconveniently warm day, it would seem that he did not reason carelessly. Against this moving battery which could place itself in any position like a piece of flying artillery on a field of battle, the deceased interposed nothing, and had nothing to interpose save the physical strength which when governed by presence of mind, ever was but feeble at best; a poor and feeble opera glass, which, even when thrown with well directed aim, was comparatively harmless; and last of all, the piteous exclamations which, however they might have moved other men, in this case, let me state, fell upon ears of stone. The evidence in this case, gentlemen of the jury, will show to you from the first act in this tragedy down to its full fruition, through each and every successive scene of horror—not only that the deceased was unarmed, but that the prisoner at the bar knew such was the fact; that he must have known it when the first shot was fired at the corner; that he must surely have known it when, subsequently, the exclamations of the deceased were ringing in the air; and that, if possible, more certainly still he must have known it when he stood bravely over his victim, revolver in hand, seeking to scatter the brains of one who had already been mortally wounded in three vital parts, and whose eyes were being covered with the film of death. I say not this, gentlemen of the jury, for the purpose of inflaming your minds against the prisoner at the bar, but as an illustration of the common law, that homicide with a deadly weapon, perpetrated by a party who has all the advantage on his side, and under circumstances indicating cruelty and vindictiveness, is murder,

no matter what may be the antecedent provocations in the case.

The evidence in this case will show you, gentlemen, that no matter how revengeful may have been the feelings of the prisoner at the bar towards the deceased at the time of their meeting, yet a sufficient time elapsed between that moment and the close of the catastrophe to have allowed whatever passion had inflamed him, to subside. Not only was there sufficient time, but all the other circumstances of the case seem to have conspired to such a result. I know not, gentlemen of the jury how so bloody a purpose could have been entertained during such a length of time, and under such appealing circumstances, except that it was sustained by remorseless revenge. At least four or five shots were fired, or attempted to be fired, and an interval of time greater or less intervened between those shots. Earnest, perhaps frantic, entreaties—such as a man would make for his life—such, perhaps as a desire for an opportunity of self-vindication, or the recollection of the little ones that he had left clustering around his hearthstone may have brought to his lips, filled up a portion of those appeals.

The first shot that, in all probability took effect upon the person of the deceased, wounded him severely in the groin. From that time, at least until he fell upon the pavement, he was in supplicating retreat, yet the prisoner at the bar did not desist from his bloody attempt to kill, hidden in his heart, as he stood over the prostrate and dying form of the deceased. Nay, more, gentlemen of the jury, the evidence will show to you in this case that he was attempting to add mutilation to murder, when he was arrested by the parties who subsequently bore the lifeless form of his victim from the spot on which he fell.

Murder, gentlemen of the jury, as you will find the definition accepted by almost all the civilized world, is the unlawful killing of a human being with malice aforethought. Manslaughter—the unlawful killing of a human being without malice aforethought. The distinction between the two, al-

though frequently made the subjects of controversy—tolerably well understood, I beg to leave to impress your mind, by the citation of some of those general principles as recognized in the common law—the law that governs us here in the administration of criminal justice.

The rules, gentlemen, by which the crime of murder is tested, are not of today's or yesterday's growth. They have come down to us consecrated by time, and have met the approval of just, wise and good men. While changes in other respects have been made in the law which governs and controls the relation of man to man, while the hand of reform and innovation has been busy tearing down and remodeling other portions of the structure of human justice, the great, grand old foundations of the common law with respect to this offense instead of being impaired, have been cemented and strengthened by time. Springing like an arch, as it were, over the vast chasm which separates the remote past from the present, they have become stronger by the pressure of centuries. The maxims of the common law relating to the crime of murder are based upon common sense and common justice. However technical that common law may be in other respects, here it deals alone with the fact. All its features are essentially human. The figures of these great old masters, even our rough hewn ancestors, as portrayed to us in the light of their own maxims, are revealed to us as living, actual men, like unto ourselves. These principles owe their entire strength, and I may say, also, their veracity, to their humanity—not the modern, sickly, sentimental humanity, but one that is God-fearing and men-loving.

And while thus they allow a sufficient toleration of the weakness of our common nature, they form as it were at the same time the very pedestal upon which rests the sublime figure of public justice. Whenever those principles are perverted, whenever they are warped for the purpose of shielding a criminal, whether he be humble or powerful, a blow is struck at both humanity and justice. Society, gentlemen, has its human cries, as well as the solitary prisoner, and if

they come up to us in the swell of uncounted voices, they are no less wrong. The jury that sends its deliverance to the offender, whose stains are not washed off by the evidence in the trial, is itself morally derelict to the high obligations which humanity alone imposes on it. These practices, gentlemen, relating to the law of murder, have been proved by experience to be so evidently wise and just, that in no civilized court that I have heard of, has there ever been any essential departure from them. Innovation, even in its widest moments, has never yet suggested the propriety of allowing revenge, as either a justification or even a palliation of the crime of murder.

Human society could exist upon no such basis, civilization itself, would become an impossibility. The common law has the most sacred regard for human rights; so sacred that even the rankest criminal who has assumed unto himself the functions of judge, jury and executioner, is himself given by that law the privileges of a fair and impartial trial. It gives to-day, to Daniel E. Sickles, the prisoner at the bar, not only what he denied to his victim—an impartial jury, and an upright judge,—but until he is proven guilty, clothes him in the spotless robes of innocence.

How long the facts that may be proven in the progress of this case, how long the presumption of innocence in his favor will control the facts of the case, as they may be given to you in evidence, is for you to determine. How soon, gentlemen, that presumption will be supplanted by another, terrible to the prisoner, is one which the law authorizes and commands you to draw—the presumption of murder arising from the evidence—is for you to judge. Whether in addition to this second presumption, the proofs in this case will show, further, an expressed malice on the part of the prisoner at the bar towards the deceased, is for you to decide.

You sit there, gentlemen, under the law of the land. No prince or potentate ever exercised a higher function than you are called upon to perform. It is as solemn as death; it is as momentous as life. Your consciences have been purged



by the ordeal of the court, and you have solemnly sworn you are competent to decide upon the guilt or innocence of the prisoner at the bar. You sit there, gentlemen, as jurymen, and not as legislators. Whether the law be wise or foolish—whether it inflicts too severe or too mild a punishment, is no concern of yours. You are there to find the facts, and not to amend the law. You might as well annul the law which impanels you, as to attempt to alter or set aside the law which defines or establishes the crime of murder. Nor, gentlemen of the jury, have you anything to do with the punishment which the law affixes to that crime. The responsibility rests alone with the law-making power, and the propriety of its exercise and administration is a question addressed exclusively to the wise discretion of the executive, who can sheath the sword of justice, or let it fall upon the guilty head.

Your duties and responsibilities, gentlemen of the jury, are solemn and momentous enough, without assuming others that do not belong to you. You sit there to try the issue between the prisoner at the bar and the prosecution of the United States, which alleges that the law has been violated.

The issue thus made up, you are sworn to try. The responsibilities that attach to the consequences of that issue rest elsewhere. Nay, more, gentlemen of the jury, those consequences themselves, independent even of their responsibilities are in the hands of the law and in the keeping of a wise, merciful and just God.

I know not, gentlemen of the jury, what will be the peculiar line of defense in this case; if I did, it would hardly be proper for me to allude to it at this time. If, however, gentlemen, it be legal, and it be proved to your satisfaction, let the prisoner go free. Let him go free as the winds of heaven.

If, however, on the other hand, it be not legal, if it receive not the sanction of the law, or if, being legal, it be not proved, I charge you, gentlemen of the jury, by the duty that you owe to yourselves, to your God, and to your country, to smite the ready hand of violence everywhere by your verdict, and to proclaim to the four quarters of the now listen-

ing world that there is virtue yet left in a jury, no matter how high the position or lofty the place of the criminal.

#### THE WITNESSES FOR THE PROSECUTION.

*James H. Reed.* On February 27 last, near Madison place, heard loud talking and saw two gentlemen in Dunnell's corner. They were from four to six feet apart; soon one of them raised his arm, and I saw a pistol aimed at the other man, who was trying to avoid the aim. He fired, and the parties moved forward some twenty feet; the man shot at retreated, the other following him; the former running round a tree crying "murder," "murder," and "don't shoot me." The man with the pistol then snapped his pistol, and it did not go off. When in the middle of the street the man fired the second time.

Just before the second fire, saw the man shot at throw something at the man with the pistol, which passed through the air slowly, and hit the man with the pistol, falling at his feet. At that moment the second shot was fired. The man shot at then cried something which I did not hear. The third shot was then fired, and the man shot at twisted round on the pavement and fell. The other then went up to him, and snapped the pistol several times within two or three feet of his head.

At the first shot, the man shot at did not move more than two or three feet. After this the man with the pistol went some twenty feet westward, followed by the man shot at. Then the man shot at retreated, and the man with the pistol followed him back,

when the man shot at got on the corner and got behind a tree; the man with the pistol snapped the pistol at him.

Mr. Key came out from behind the tree at the moment the pistol was fired the second time. After the second shot he exclaimed he was shot, and retreated to the pavement. Key's back was towards the man who fired when he retreated.

When Key fell, the man with the pistol got in front of him and shot the third time while he was lying on the pavement. When the third shot was fired, Key cried: "Don't shoot."

Between the third shot and the succeeding snapping of the pistol about two seconds elapsed. Key fell some thirty feet from the lamp post on the corner.

*Cross-examined.* I buy and sell wood and coal. Have seen Key once at this bar. Did not know him at the time of this occurrence; did not see the features of either so as to recognize them. Saw no others until several persons came running from the club house down Madison place. There was no persons that I observed who saw the first and second shots fired. After the first shot Mr. Key did not advance upon Mr. Sickles or touch his person. Saw nothing like a tussel. There were three shots fired, and three snappings of the pistol. The article which Key threw at Sickles moved very slowly. It touched the body of Sickles, but could not say where.

The second shot was simultaneous with this throwing. They were then about eight or ten feet apart. After the last shot Mr. Sickles turned around and walked in a northerly direction up the street. Should judge the shot struck Key within this circle (witness described a circle from his throat to the lower part of his abdomen). The last two shots were rapidly made. The whole affair lasted from a minute and a half to two minutes. Key fell on his side and elbow with his face towards Sickles.

*Philip V. R. Van Wyck.* Am a clerk in the Treasury. Was on the north side of Pennsylvania avenue, in front of Commodore McCauley's residence, and west of Riggs's bank. Observed two gentlemen on Dunnell's corner apparently in conversation. Saw one of them retreat rapidly north up Madison street. Saw the other raise his arm simultaneously, and heard the report of a pistol; they both disappeared from sight; on approaching the corner, saw one of them about the middle of Madison street, near the corner, fire again. He disappeared beyond the house; I approached the corner, and on reaching there observed a man lying upon the pavement motionless, and another standing between him and the fence with a pistol in his hand, which he presented to the person lying down and snapped. Saw him cock it and present it again, heard it snap, but did not see it; saw some parties approach the body, which appeared to be lifeless, and pick it up; when I first saw the parties could see a space between them. The one who fired had retreated.

Should think the distance between the parties at the time of the firing about six feet. Recognized the man who had the pistol as Daniel E. Sickles, the prisoner at the bar. Also saw there Mr. Butterworth, Mr. Martin and Mr. Upshur; saw only two shots fired.

*Cross-examined.* Cannot say what time elapsed between the first and second shot. Should think about two minutes. Heard three reports from a pistol, not in rapid succession, but with nearly an equal distance of time between the first and second and third shots. Heard exclamations but could not understand them or distinguish from whom they proceeded. Think they came from the party who retreated. Saw no person speak to Sickles while Key was lying upon the ground. Saw a single barrel pistol lying on the ground. Think it was a Derringer pistol. Did not notice how Mr. Key was dressed; cannot say whether he had on an overcoat or not. When he retreated, he retreated with his face towards Mr. Sickles.

*Edward Delafeld, Jr.* When opposite the gate near the President's house, saw Mr. Sickles coming down the street on the Club House side; saw him address a gentleman on the corner; heard the report of a pistol. The shot did not seem to take effect on Key, for he ran and said "Don't shoot"—"don't shoot me,"—"don't murder me." After that, he got behind the tree. Sickles followed and Key caught Sickles by the hand. This shot seemed to take effect. As he was lying on the pavement Sickles put the pistol to his breast and fired. Sickles cocked

the pistol and put it near the head of Key and pulled the trigger. The cap missed. Two gentlemen were running from the Club House. Sickles seemed to be putting on a new cap. One of the gentlemen took him by the hand, when Sickles seemed to order him off. He then fired a third time; Sickles then joined a gentleman and walked away up Madison place. The whole affair occupied about two minutes from the time when my attention was first directed to the firing. Did not know Mr. Sickles personally, although he had been pointed out. Cannot say how he was dressed.

*Cross-examined.* Did not know Mr. Key till told who he was; did not observe how he was dressed, and whether he wore an overcoat or not. The first shot missed, the second struck him in the groin, the third took effect in the breast, the fourth missed, and the fifth took effect in the breast. Did not observe the pistol he had in his hand. The five shots seemed to be fired out of one pistol. The last explosion appeared to be a shot, and not a snap.

To the *District Attorney*. Saw no other persons about the neighborhood until after the third shot, and then saw gentlemen coming down from the Club House. Did not see any gentlemen on the south side of the avenue.

*Joseph Dudrow.* On 27th February, passing the southeast corner of Pennsylvania avenue and Madison street, heard the report of a pistol; saw Key jump one side. As he did so, Sickles raised a pistol to fire a second time, and Key jumped and

grabbed him so that he could not fire. They scuffled for a moment or two, when they separated, and Sickles ran across to the flagstone. Key followed him up, apparently trying to grab him and to keep him from shooting, but he did not succeed in catching hold of him. Sickles turned on Key; Key retreated, crying, "don't shoot me." Sickles then fired. Key jumped, but whether the shot struck him, do not know. He cried, "murder," and ran across the street to the place where he had come from. Sickles followed him to the second tree, and fired while he was standing. Key fell and Sickles put the pistol to his head to fire again, but the cap snapped. Sickles fired three shots; do not know the distance from the muzzle of the pistol to Key's head; it appeared to be very close. After he had snapped the pistol at Key's head, some gentleman came from the direction of the Club House, and took him by the arm. Sickles jerking his hand away, drew back; heard Sickles say some words, but could only distinguish the words, "my bed." I did not see anything prior to the first shot.

*Cross-examined.* Cannot tell exactly what part of Mr. Sickles' person was attempted to be seized by Mr. Key; think Key used both hands; should judge he took hold of Sickles about the waist. Sickles put the pistol to the head of Mr. Key, he was lying on his right side on the pavement near the second tree; did not see any pistol lying on the pavement, nor did I see anything thrown from Mr. Key.

*Richard M. Downer.* Was standing at corner 15th and New

York avenue when I heard a pistol. I ran across the street, and when I got to Corcoran & Riggs' corner heard a second report of a pistol; still ran ahead, and before I had got up to Maynard's, there was another report; then I heard a snap; went around the corner to where Key was; saw him lying on the pavement. Mr. Sickles was about fifteen feet from him. Heard him remark, "Is the damned scoundrel, or is the damned rascal dead?" Saw a pistol in Mr. Sickles' hand. Twenty-five minutes after I picked up a single-barreled pistol, a Derringer pistol. It was not loaded. There was an exploded cap upon the nipple. Handed the pistol to the coroner.

*C. H. McCormick.* Reside on corner of Pennsylvania avenue and Madison place; heard the report of a pistol; stepped to the window; saw two persons running, and remarked it was a street fight; saw Mr. Key; Sickles advanced towards him and fired. Mr. Key then went in the direction of the second tree from the corner. Sickles followed. Key, with one hand, had hold of the tree, and partially fell into the gutter against the curb. Sickles in the meantime got to the tree and fired at him.

*Thomas G. Martin.* Am clerk in the Treasury; on the day referred to, was walking towards H street, when I heard the report of a pistol; turned and recognized Key, Sickles and Butterworth; Sickles had apparently just fired a pistol. Butterworth was leaning against the railing; Sickles and Key had moved out towards the middle of the street, and then came back

towards the pavement; hurried on towards them, stopping at the Club House for a moment to announce that Sickles was shooting Key. Mr. Key had got to the pavement and lay on his back with his feet towards the Club House. Sickles was standing with his back to the railing, he pointed a pistol at him and exploded the cap; took hold of Key, and looked into the face of Mr. Sickles, and heard him say "he has violated my bed."

Key was extended on the pavement, resting on his elbow. With those who were near to aid, carried him into the Club House. He was breathing when we arrived there. Spoke to him, but he did not seem to understand, and made no response. Dr. Coolidge came in shortly afterwards and I left the room.

*Francis E. Doyle.* Was in the Club House when Mr. Martin came in; went out and saw Barton Key lying on the pavement, and Mr. Sickles a few feet from him, standing with a pistol in his hand, apparently attempting to shoot him in the head. Heard Key cry "murder," "don't shoot;" placed my hand on Sickles' shoulder and begged him not to fire. He turned round and said, "He has defiled, or dishonored my bed." Butterworth then approached, took Sickles by the arm, and walked up the street. Mr. Key died almost immediately after being taken into the Club House and laid upon the floor.

*Abel Usher.* Am clerk in Navy Department. Was in Club House. Mr. Martin rushed in and told us what had occurred; just before we got out of the door, heard the report of a pis-

tol. Key was down and Sickles over him. On reaching Mr. Sickles, Mr. Doyle touched him on the left shoulder, and Mr. Titball on the right hand. Before we heard the pistol snap, we heard Mr. Key cry out murder. Mr. Sickles desisted immediately and turned to us and observed that Mr. Key had dishonored his bed; took Mr. Key up and carried him into the Club House. Sickles had some kind of an overcoat or cloak on. Did not remember whether it was a warm day or not.

*Edward M. Titball.* Was at the Club House with Upshur and Doyle about two o'clock. When we came out saw Key on the ground and Sickles standing near him, toward his head, with a pistol pointing in that direction. I heard the pistol snapped. Touched Sickles on the shoulder; he immediately drew back and exclaimed that Key "had dishonored and defiled my bed." A gentleman approached from the corner, whom I recognized as Mr. Butterworth, and taking Mr. Sickles' arm they walked away together. We took the body of Mr. Key to the Club House, laid him on the floor, and put a chair under his head, then went for the doctor.

Sickles' dress was, I think, a brown overcoat and light pantaloons and hat. It was rather a long overcoat. It was a pleasant day, and I had found it quite warm.

*Cross-examined.* I think that I wore an overcoat that day; did not see any pistol picked up; afterwards saw a pistol lying on the ground on my way after a physician.

April 8.

*Thomas Woodward.* Am coroner of the county. Held the inquest on the body of Mr. Key. On that occasion a pistol was delivered to my keeping; is a Derringer pistol, stocked to the muzzle, plated and about seven inches long with a wide rifle bore. Examined the body and clothes of Mr. Key; have the clothes here. (Unties a handkerchief and takes from it two keys and the case of an opera glass.)

I examined the body. One ball had entered his side; another the thigh, near the great artery, and there was a bruise on the right side; also a slight wound on the hand.

*Eugene Pendleton.* Was not present at the death of Mr. Key, but was near the place where he was shot; saw two of the shots fired; was walking on the south side of the avenue, and near the east gate leading to the President's house, when I heard the report of a pistol; saw two persons near the corner of Sixteenth street in a scuffle; one was attempting to rid himself of the other; one was retreating, the other following him up; one nearest me freed himself and ran into the middle of the street, followed closely by the other, who at the same time threw something from his hand; recognized the one who retreated as Mr. Sickles; Mr. Sickles soon turned and brought down a pistol on the other, who was then about ten feet distant from Mr. Sickles, and the other exclaimed: "Murder! Murder! Don't shoot!" Mr. Sickles fired; the shot seemed to take effect; the gentleman shot swooned or willied, as it were, with his hands in

this manner (pressed to his sides); he turned and fell on the pavement; Mr. Sickles followed, and, standing over him, fired a second time as the other lay at his feet; Mr. Sickles presented a pistol again to the other's head or shoulders; the pistol snapped; heard the explosion of the cap; at that time some one approaching from the Club House placed his hand on Mr. Sickles' shoulder; Mr. Sickles turned round; some words passed between them; then some one came and took Mr. Sickles' arm, and they walked off up the street; very soon persons began to collect, and took up Mr. Key and conveyed him to the Club House. I turned to walk home, and discovered a man on the opposite side of the street fishing out an opera glass; cannot say it was the article I saw thrown.

Did not see any pistol in the hands of Mr. Key; first time I saw a pistol in Mr. Sickles' hand was at the time of the second fire; did not see the first fire; did not see whether Mr. Sickles had a pistol in his hand at the time of the scuffle. Heard reports of three pistols. Saw two of them.

*Dr. Cooleage.* Made two examinations of the body; a partial one at the Club House; deceased had not ceased to breathe when I saw him first; at that examination saw one wound on the left side, between the tenth and eleventh ribs; felt two inches below the groin another wound; after the coroner summoned me the clothes were removed from the body by Dr. Stone and myself in the presence of the coroner and the jury; a wad was found on the left side. There

was a slight abrasion on the side of the middle finger of the left hand.

*Mr. Ould.* What do you infer the position of the deceased at the time the wound was given?

*Mr. Stanton.* That is a question for the jury to try.

*Mr. Brady* denied that any physician was permitted to express an opinion on a matter not purely relating to, and circumscribed within the boundary and limits of, science.

The JUDGE. The question is, substantially, whether from the organs wounded and those not wounded the deceased must have been in an erect or recumbent position. I think the question is competent.

*Dr. Cooleage.* The course of pistol balls is at times very tortuous and difficult to trace, but my opinion is that the body must have been in a semi-recumbent posture; that Mr. Key must have been lying on his right side, the body turned a little over to the right, and the shoulders a little higher than the hips. Am connected with the army of the United States as Assistant Surgeon. Measurably familiar with gunshot wounds. Have no doubt that this wound was inflicted by a pistol shot.

*Mr. Ould.* Could you give an opinion as to the style of pistol with which this wound was inflicted?

*Mr. Brady* objected.

The JUDGE ruled against it.

I cut out the ball myself, and could recognize it. It was marked. (Pistol ball handed to witness.)

To the best of my knowledge and belief that is it.

*Mr. Ould.* To what particular

classification of pistols does that ball commonly belong?

*Mr. Brady* objected. A physician is not an expert in the manufacture of firearms.

*The District Attorney.* Certainly, if he is a physician in the army. If not, he cannot discharge his duty.

*Mr. Brady.* I think he can discharge his duty without discharging firearms.

*To Mr. Brady.* In the club found him breathing his last; six or seven persons were there, including two colored men; the white persons were Messrs. Doyle, Martin and Upshur; took the opera case from the left side pocket of his coat; the case was closed and empty; saw two keys, but could not identify those exhibited. Mr. Key and Mr. Sickles were nearly of the same height, probably five feet eleven inches.

*Chas. H. Wilder.* Was present at the club house on the day of Mr. Key's death; assumed charge of the body till the coroner came; everything was taken from the pockets of Mr. Key; there were, the case of an opera glass, some keys and some money.

*The District Attorney.* We offer the Derringer pistol, which has been identified, and the ball.

*Mr. Brady.* On what ground do you offer these as evidence.

*The District Attorney.* Because they are the implements of death; they have identified the ball as having been taken from the wound; we offer the pistol on a distinct ground, as having

been found near the spot where the killing took place.

*Mr. Brady.* We make no question as to Mr. Key's dying of the wound described. What then did the presentation of the ball prove? Nothing at all. As for the pistol, what was the evidence? That it was found in the street, and delivered to the coroner in the club house. Whom it belonged to or who discharged it, no witness had informed the Court, and no witness had expressed an opinion as to whether there was any connection between the ball and the pistol. As to the pistol seen in the hands of Mr. Sickles, all the witnesses agreed that it was a revolver. If this pistol is admissible in evidence, it must be on the ground that its being found in the vicinity made it part of the *res gestae*.

*The Judge.* The pistol having been found at the place where the mortal wound was inflicted, or about that place, and the ball having been taken from the body of deceased, it is for the jury to draw an inference as to what use was made of the pistol, by whom, and with what effect. It is a part of the whole transaction and I am clearly of opinion that the pistol and ball may properly and ought properly to be exhibited to the jury.

*Mr. Brady.* Your honor considers then that it is part of *res gestae*.

*The Judge.* Certainly. Whether the prisoner used the pistol or not, is a matter of fact for the jury to decide.



MR. GRAHAM, FOR THE DEFENSE.

April 9.

*Mr. Graham.* May it please the Court—Gentlemen of the jury: This is to me a time for solemn thoughts, and I rise to address you laboring under a severe struggle of feeling. It is a beautiful sentiment, better expressed in the Latin, than in the translation, *amicos res opimae pariunt; adversae probant*. Prosperity is the parent of friends; bad fortune is the fire in which they are tried. Friendship is the most sacred of all artificial, as distinguished from our natural attachments. It stands next to those which by the hand of Nature have been interwoven with the objects which she herself creates. Upon the altar of this relation I cast my present offering. It carries with it the unction of a warm heart. May it prove to be an efficacious tribute in favor of my client! I have been the companion of his sunshine, and I am now called here to participate in the gloom of his present affliction.

Trouble is a mysterious visitor. It seems to be the unhunnable doom of man. It has been well said that, "Although affliction cometh not forth of the dust, neither doth trouble spring out of the ground: yet, man is born unto trouble, as the sparks fly upward." That same great influence which has impressed laws upon all the departments of creation—which has studded the heavens with their fires, and ordained the boundary line between the day and the night—that same great influence which stretches over the face of Nature verdure's green mantle, and again supplants it for the less pleasing dress of winter—that same great influence which has designated the time for the dropping of the leaves and the falling of the sparrows—is the will that guides, and the hand that holds the rod, with which, in this life, we are punished. As we pass from the proceedings in which we are here engaged, may we be permitted to repeat over their result (which I confidently anticipate), as a congratulation to this defendant for the severe ordeal through which he has passed: "Behold, happy

is the man whom God correcteth: therefore despise not thou the chastening of the Almighty: for he maketh sore and bindeth up: he woundeth, and his hands make whole. He shall deliver thee in six troubles: yea, in seven there shall be no evil touch thee."

A few weeks since, the body of a human was found in the throes of death in one of the streets of your city. It proved to be the body of a confirmed—an habitual adulterer. On a day too sacred to be profaned by worldly toil—on a day on which he was forbidden to moisten his brow with the sweat of honest labor—on a day on which he should have risen above the grossness of his nature, and though on no other day he had sent his aspirations heavenward, he should have allowed them then to pass in that direction—we find him besieging with the most evil intentions that castle where, for their security and repose, the law had placed the wife and child of his neighbor. Had he observed the solemn precept, "Remember the Sabbath day, to keep it holy," he might at this moment have been one of the living. The injured husband and father rushes upon him in the moment of his guilt, and, under the influence of frenzy, executes upon him a judgment which was as just as it was summary.

The issue which you are to decide here is, whether this act renders its author amenable to the laws of the land. In the decision of this issue, gentlemen of the jury, you have a deep, a solemn interest. You are here to fix the price of the marriage bed. You are here to say in what estimation that sacred couch is held by an honest and an intelligent American jury. You are favored citizens. You live in the city which constitutes the seat of our federal government; a city consecrated to liberty above all others, but not to the liberty of the libertine; a city bearing the name of the illustrious Washington, the "Father of his Country," of whom it has been emphatically and truly said that he was "first in war, first in peace, and first in the hearts of his countrymen." You may feel a pity, in reviewing this occurrence, for the life which has been taken; you may regret the necessity which constrained that

event; but, while you pity the dead, remember, also, that you should extend commiseration to the living. That life, taken away as it was, may prove to be your and my gain. You know not how soon the wife and daughter of some one of you would have been—nay, you know not but what she had already been—marked by the same eyes which doomed and destroyed the marriage relations of this defendant. You know not how soon the gardens of loveliness over which you now preside, had that life been spared, would have been called upon, by the deceased, to supply their flower, wherewith to gratify his wicked, yet insatiable appetite.

Any interference with the marriage relation must strike every reflecting mind as the greatest wrong that can be committed upon a human being. It has been well said that affliction, shame, poverty, captivity, are preferable; and I do not know that I can express the sentiment more happily than in reciting the lines which the great dramatist has placed in the mouth of the Moor, over the supposed discovery of the inconstancy of his Desdemona:

"Had it pleas'd Heaven  
To try me with affliction; had he rain'd  
All kinds of sores and shames on my bare head:  
Steeped me in poverty to the very lips;  
Given to captivity me and my utmost hopes;  
I should have found in some part of my soul  
A drop of patience; but alas! to make me  
A fixed figure for the time of scorn  
To point his slow, unmoving finger at,  
Oh! Oh!  
Yet I could bear that too; well, very well.  
But there, where I have garnered up my heart;  
Where either I must live or bear no life;  
The fountain from the which my current runs,  
Or else dries up; to be discarded thence.  
Or keep it as a cistern, for foul toads  
To knot and gender in!—turn thy complexion there!  
Patience, thou young and rose-lipped cherubim;  
Aye, there look grim as hell."

You are here to decide whether the defender of the marriage bed is a murderer—whether he is to be put on the same

footing with the first murderer, and is to be presented in his moral and legal aspects with the same hues of aggravation about him.

Gentlemen, the murderer is a most detestable character. Far be it from me to defend him before this or any other jury. Society cannot, it ought not to contain him. Calm, cold, and calculating, he saves his malice as the miser saves his treasure. His bosom is the vault in which he deposits it. Age possesses no claim upon his consideration—nor does sex interfere with him in the execution of his bloody purpose. In the very air he sees his weapon, and it marshals him “the way that he was going.” He selects some object of innocence for his victim, and chooses some lonely spot for the perpetration of his horrid deed. In the drapery of the Night he wraps himself—and at that hour when

“O’er the one half world  
Nature seems dead, and wicked dreams abuse  
The curtain’d sleeper,”

he steals forth to the accomplishment of his bloody design. Afraid of his own movements, he is compelled to address the very Earth itself in the language of supplication—and entreat it to

“Hear not his steps, which way they walk, for fear  
The very stones prate of his whereabouts.”

If, between the act which has placed the defendant in his present position, and the act of a criminal like that, you can trace any similarity, it will be for you to institute and perfect the comparison; it is not in my power to do so.

There are some preliminary matters, gentlemen of the jury, to which I shall very briefly allude, before I proceed to the discharge of the important duty which has been cast upon me by the concurrence of my learned associates for the defense. There are some features of this trial which are to be borne in mind by you at this time.

One feature to be regarded about this trial is the appearance of extra counsel on the part of the prosecution. We

have been informed that they have not been assigned to the case by the act of the Government, and you must determine the question, although there may be a legal propriety in their appearance, under some circumstances, how far the exigencies of this case demand or justify it on this occasion.

Another feature of the case to be borne in mind by the jury is this: the extraordinary character of the opening of the learned counsel for the Government. It was an able, it was an eloquent production. It reflected credit upon the mind from which it emanated, for it was stamped with a high order of ability; but it will be for you, gentlemen, to say, when you pass that opening in review before your minds, whether or not it was warranted by the humanity that should ever attach itself to his position. You will remember the extraordinary expression of the "prisoner coming to this carnival of blood," of his being "a walking magazine," of his "adding mutilation to murder," of his "standing bravely over his victim," as though with dagger drawn ready to plunge it in his bosom. Gentlemen, you would have thought, from this opening, that the learned counsel for the Government was describing a case of the most deliberate homicide—and yet the case he was describing, was the case of a man, who, while acting from a sense, and under the influence of a sense, of right, was nevertheless, no doubt, at that particular juncture, entirely bereft of his reason. At the time he alluded to the magazine, which he described as being in the possession of the defendant, did it occur to the learned counsel for the prosecution to describe also the weapons that were in the possession of the adulterer? For with his opera-glass and white handkerchief he was capable of carrying death just as certainly to the domicile of the defendant, as the weapons, with which this defendant was provided were capable of carrying death to him. The sight of that opera-glass, and those other appliances with which the deceased was furnished, in the prosecution of his unhallowed purposes, were just as certain death to the happiness and hopes of the defendant, as though the pistol of that adulterer had been presented at his breast.

Gentlemen of the jury, I ask you this; why is it that this prosecution is thus technically managed? Is there anything behind, which, if it escaped, would satisfy this jury that this is an unhallowed prosecution? I do not mean by this to impeach the integrity of the authorities in any way; I use the word unhallowed rather in the sense that it ought not to succeed through the instrumentality of an intelligent jury. Is there anything in this prosecution which requires that the case should be tried in the way in which it has been tried; that from this jury all but property-holders should be excluded; that in the opening address of the learned counsel for the Government the occurrence should be presented under a hue which the facts do not impart to it; that strong extra counsel should be employed in order to sustain the prosecution and that witnesses should be examined in a particular form so as to exclude from the ears of this jury, that fact which, when it becomes a part of this case, must incline the scale in favor of the defendant? It will be for you, under all the circumstances as I have presented them to you, to account for these extraordinary features in this prosecution.

In relation to your province, gentlemen of the jury, as I understand it, the Court has invested you with the largest powers. I have read several of the charges of the learned Judge upon the bench to juries, and I find that he is imbued with a spirit which has only been exemplified in an equal degree in one instance, to my knowledge, by any other jurist, and that is by the great Chancellor Kent. The greatest champion that juries ever had in this country was probably that great and now deceased jurist; and the same spirit which seems to have entered into the instructions and judgments of that learned jurist, with reference to the rights of juries, appears to influence the learned Judge upon the bench in relation to your province. As I understand the law of this Court, every fact is to be passed upon by the jury—not only the facts entering into the occurrence, which is charged as a crime, but the state of mind—the intention—the motives—that impalpable influence, if there was such an influence—which set

on the defendant to the commission of the act, for which he is now arranged as a criminal before you. So far as the definition of offenses is concerned in this case, resort is to be had to the common law of England, and the trial by jury, in this district, is to be according to the course of that same common law, except as modified by the genius of our institutions, or as changed by the Constitution and laws of the United States, or the law of the State of Maryland, as continued over this district by federal legislation. As to the crimes claimed to be involved in this proceeding, let me first ask your attention to the definition of murder, as given in 4th Blackstone's Commentaries, page 195, a book of the highest authority, and the law, as here laid down, is to control you in the discharge of your present duty. Blackstone, borrowing his definition from Coke, thus defines murder:

"When a person of sound memory and discretion unlawfully killeth any reasonable creature in being and under the King's peace with malice aforethought, either express or implied."

We have no king, and therefore, to carry out this definition, we must substitute in place of "the King's peace" "the peace of the people of the United States."

I shall, in another branch of the case, consider the question, whether at the time of the death of the deceased, he was in the peace of the people of this great Government, whether the adulterer, when he goes forth upon his mission, does not cease to be in the peace of the community, and whether he is not making direct war upon those great fundamental principles upon which not only the institution of marriage itself rests, but upon which our social fabric is founded.

The definition of manslaughter is given in the same book:

"The unlawful killing of another, without malice either express or implied, which may be either voluntarily, upon a sudden heat, or involuntarily, but in the commission of some unlawful act."

The difference between murder and manslaughter (as was stated by the learned counsel for the Government) is this;

the one is supposed to be committed in cold blood as the result of premeditation, and the other is supposed to be committed in a state of heat resulting from passion, but resulting from passion which ought to be controlled, but is not controlled; for passion which cannot be controlled is not passion which places any man within the pale of criminal accountability.

In this connection let me also ask the attention of the Court and jury to Foster's Crown Law, p. 290, which, although it is an old treatise, nevertheless, is one of the purest and most reliable oracles from which legal knowledge can be gained. This author says, speaking of manslaughter:

"I now proceed to that species of felonious homicide, which we call manslaughter, which, as I before observed, the benignity of our law, as it standeth at present, imputeth to human infirmity; to infirmity which though in the eye of the law criminal, yet is considered as incident to the frailty of the human frame."

I refer also to the same treatise, for a definition of malice. This point is important, for the great question to be solved by the jury in this case is—what was the state of the defendant's mind at the time he slew the man who had contaminated the purity of his wife.

That is the cardinal question here. The counsel for the defense noticed on the first day, on which the witnesses for the Government gave their evidence, that some of the jurors took notes of the testimony given as to the mode or circumstances of the killing; but as we understand or look upon this case, it is perfectly immaterial how death was inflicted; whether it was the result of one shot or of thirty shots; whether the man who was killed stood up or lay down. The inquiry upon this part of the case, at least is, what was the influence of the provocation he gave, upon the mind of the man who slew him; what was the condition of the mind of the defendant at the time he killed the deceased.

If the transaction was presided over by a mind perfectly self-possessed, that may constitute a different question, al-



though, in some of the aspects in which I shall hereafter present this case, even that would not be conclusive in establishing that there was any criminality on the part of the defendant. But assuming, for the sake of the argument, that, under other circumstances, the act of slaying would be a crime, then the inquiry is—what was the condition of the mind of the defendant at the time of the perpetration of his act?

Serjeant Foster says that the term malice, in this instance, signifieth

“That the fact hath been attended with such circumstances as are the ordinary symptoms of a wicked, depraved, malignant spirit.”

Do you mean to tell me that the ordinary symptoms of a wicked, depraved, malignant spirit attend the act of the husband who slays the man who has polluted his wife? What distinction, then, do you draw between the case of a man who slays in order to commit a crime, and that of the man who slays in order to prevent the commission of a crime? Unless, gentlemen of the jury, you are prepared to find that the act of the husband who vindicates his marriage bed, by slaying the man who dares to defile it, is symptomatic of a “wicked, depraved and malignant spirit,” there would seem to be an end of the case, upon this branch of it.

But to proceed with our author: After saying that malice in reference to the crime of murder, is not to be understood in the restrained sense of “a principle of malevolence to particulars,” he proceeds:

“For the Law by the term malice, in this instance, meaneth that the fact hath been attended with such circumstances as are the ordinary symptoms of a wicked, depraved, malignant spirit.”

“In the case of an appeal of death, which was anciently the ordinary method of prosecution, the term malice is not, as I remember, made use of as descriptive of the offense of murder in contradiction to simple felonious homicide. The precedents charge that the fact was done *nequiter* (wantonly, craftily), *et in feloniam* (feloniously), which fully taketh in the legal sense of the word malice. The words *per malitiam* (by malice) and *malitiose* (maliciously) our oldest writers do indeed frequently use in some other cases; and they constantly mean an action flowing from a wicked

and corrupt motive—a thing done *malo animo* (with a bad or depraved mind), *mala conscientia* (a wicked heart or conscience), as they express themselves.”

The same author further says :

“The legislature hath likewise frequently used the terms ‘malice’ and ‘maliciously’ in the same general sense, as denoting a wicked, perverse and incorrigible disposition.”

Again—on the same page :

“The *malus animus* (the evil or wicked mind) which is to be collected from all circumstances, and of which, as I before said, the court, and not the jury, is to judge” (which was the law when this author wrote), “is what bringeth the offense within the denomination of willful, malicious murder, whatever might be the immediate motive to it; whether it be done, as the old writers express themselves, *ira* (in or from anger), *vel odio* (or hatred), *vel causa lucri* (or for the sake of gain), or from any other wicked or mischievous incentive. And I believe most, if not all, the cases which in our books are ranged under the head of Implied Malice, will, if carefully adverted to, be found to turn upon this single point, that the fact hath been attended with such circumstances as carry in them the plain indications of an heart regardless of social duty, and fatally bent upon mischief.”

Contemplating this proceeding, in reference to the charge of murder, you behold in these citations, gentlemen of the jury, the hideousness of the peculiar, the animating principle of that crime.

In order to constitute “malice,” as that term is understood in reference to murder, you must find that the act, which is alleged to be malicious, was the result of a wicked, depraved and malignant spirit; and if you can ascribe a spirit of that mind to the act of the husband who slays in defense of his marriage bed, then I have the honor to address gentlemen differently constituted from what I suppose you to be.

I must now pass on to another subject. Having given you the definitions of murder and of manslaughter, you are required to say, in the discharge of your duty ultimately, whether this case comes within either of those definitions—whether the act of the defendant, within either of those defini-

tions, was or is evincive of a criminal heart. If it is a crime for a husband to defend his altar, his humble family altar, and if death is to be visited upon him for defending it, then the highest honor that can be conferred upon any man is to compel him to die such a death.

Now, three things are to be noticed: first, that human laws do not shield us in the enjoyment of all our rights; second, that a right created by divine law is perfect, though not recreated by human law; and, third, that to certain relations the divine law has attached responsibilities to execute which is not to commit a crime. The two first considerations are properly discussed together, and, by way of enforcing them upon your minds, we insist that our legal system does not reach the case of every wrong that can befall us. There are certain wrongs which we are not protected against, at all, by human laws, and therefore the only law which protects us against them is that which is traced in the human bosom by the finger of God—the law of human nature; the law of human instinct. When human laws do not protect us against injury, we appeal to our instincts; we are thrown upon the law of our instincts, and have a right to defend ourselves against those wrongs. This position will be perceived, upon examination, to be well founded. There is no law in this district which says you have a right to defend yourself against attack, except the law of nature. It would be folly to pass a statute to declare that a man may defend himself against the assault of a highwayman; or if a statute were passed on a subject like that, it would be folly to say that before the statute was passed, you had not the right of defense. Self-preservation is nature's great law, and it overrides all other laws. Two men are floating on a plank, and it is necessary that one should be drowned in order that the other may be saved. It is not murder in the person who, to save his own life, drowns the other, when two persons are so situated, because the law considers that all social regulations must yield to those great principles which are implanted in us, and are a part of us as we come from the hands of the great Creator.

Serjeant Foster, at page 273 of his Treatise, says :

"The right of self-defense in these cases (alluding to the cases in which the right can be availed of), is founded in the law of nature, and is not nor can be superseded by any law of society. For before civil societies were formed, one may conceive of such a state of things, though it is difficult to fix the period when civil societies were formed, I say before societies were formed for mutual defense and preservation, the right of self-defense resided in individuals: it could not reside elsewhere. And since, in cases of necessity, individuals incorporated into society cannot resort for protection to the law of the society, that law, with great propriety and strict justice, considereth them as still in that instance under the protection of the law of nature."

What is the law of self-defense? Is it merely defending yourself, and allowing any person that comes along to slay your wife, or your child? Is that the law of self-defense—or is there not some relative duty cast upon you? Has the Creator made you so abominably selfish that you satisfy the demands of your nature when you defend yourselves, though you allow the partners of your bosoms or the offspring of your loins to be stricken down under your eyes? It is not so, as I shall presently show you; and that involves the consideration of the last of the propositions to which I have thus preliminarily directed your attention.

The authority cited proves that, to a certain extent, nature's law is our protection, and that social laws cannot supersede or divest us of that protection, and that as to all rights falling within the pale of nature's law, the great council chamber of Jehovah is the source from which the law is to come.

If, as you will shortly see, by numerous citations from Scripture, the adulterer is allowed to be slain by the law of God, and the right of a man to protect his wife against contamination is made a natural right, then, within the authority which I have read to you, it is not in the power of human laws to take away that right from those upon whom it is thus conferred. Do you mean to tell me that, when the great Being above said, "thou shalt not steal," it was not as high a crime

to steal before, as it is after human legislation has said, "thou shalt not steal!" When the great Being above said, "thou shalt not kill," and "thou shalt not bear false witness against thy neighbor," those crimes were perfect. He himself pronounced those ordinances. Human laws may enforce them with additional sanctions, but do not impart to them additional solemnity. The crimes would be just as great and smell as rank in the nostrils of Heaven if human legislation should ignore the subject entirely, as if human legislatures had undertaken to embody all that is in the Decalogue in their own statutes. In this District no protection is provided against the adulterer, unless you can protect yourself against him. There is no law which furnishes that protection. What is the inevitable result? Why, that you are thrown upon the principle *se et sua defendendo*—of defending yourself and your own. Not to be so abominably selfish as to defend yourself, and let your own be taken from you—but to defend both yourself and your own. Do you not wish to be as safe against the adulterer as against the housebreaker? Has society redeemed its compact with you when it protects you from the attacks of the housebreaker by night, but permits your house, when you have left it during the day to pursue your honest toil, to be polluted by the tread of the adulterer? One reason, then, we are bound to suppose, why society has not provided by positive legislation against the act of the adulterer, is that it considers that the natural right of a man to protect himself against that malefactor is as perfect under the Divine law as is his right to protect himself against any other violator of his natural rights. Gentlemen, there is nothing in this doctrine revolutionary or subversive of the peace and good order of society. Where society has protected us, we are not thrown upon the law of self-defense, but where society has not protected us, we are thrown upon that law. In this district there is no law which protects you against the man who would rob you of the affections of your wives, unless it is engraven upon your hearts by the hand of the Great Being who made you.

You will see more plainly the importance of this, gentlemen

of the jury, when I come to construct the argument which I design addressing to you from the Scriptures, as to the heinousness of the offense of the adulterer, as it is stamped upon his act by the law of God.

We may assume, then—and I state it as a proposition—that whenever a right is given by the law of God, even though not expressly recognized by human law, and the violation of that right is denounced by the moral law as an offense of aggravated hue, to defend oneself against its violation is acting upon the principle of self-defense. The law says that no man shall enter your house at night to rob it, and that if any one does so, and you detect him in the act, that you have a right to defend yourself and your own against him, even to the extent of taking his life. If human law can give you a right to take away the life of a man when he is committing an offense which it has made an offense, why have you not the same right in reference to the Divine law, when it has declared an offense to be equally heinous with the one created by human legislation? As will presently appear, under the Divine law, it is a great deal more aggravated an offense to contaminate the wife of your neighbor than to enter his house at night for the purpose of robbing it, and if human law can confer upon you the right to kill the burglar, the Divine law can impart to you the right to kill the adulterer. You will bear in mind that I am not insisting that a man has a right to kill even an adulterer, as the result of cold, deliberate thought. This is not such a case; for, unfortunately in this case, the deceased was caught, if not in the fact of adultery, at least so near the fact, as to leave not the least doubt of his guilt. The defense regard this as a very important point, and as I am about leaving it, I will state it to you again. We say this: that if society has not protected you in the possession of your wives, it is proof conclusive that society meant that your right to their possession should remain as at nature—and that the right to protect the purity of your wives is a natural right which you can assert even to the extent of killing whoever seeks to deprive you of it, as much as you can

kill for the purpose of protecting your own lives. We may assume, then, that wherever a right is given by the law of God, even though not expressly recognized by human law, and the violation of that right is denounced by the moral law as an offense of an aggravated hue, to defend oneself against its violation is an act based upon the principle of self-defense. As has been already seen, this is not a selfish principle; it extends to the protection of your own as well as to the protection of yourselves. If you can kill in defending yourself against an offense declared felony by human laws, and be blameless, why not when the Divine law makes an act against you the greatest conceivable offense? It would be an outrage upon all decency to compare a felony created by a human law with such an offense as adultery is made by the Bible. I shall show you, by abundant citations from that sacred book, that one of the most serious offenses that can be committed against the Divine law is this crime of adultery. Human laws may enforce obedience to the Bible, by their own sanctions. They may create or multiply penalties—but do they, can they, increase or add to its moral obligation? As well might they seek to repeal its commandments, as to lend them any force by re-enacting them!

It may be said that Mr. Sickles had a civil remedy, and could have brought an action for damages. Would this have staunched his wounds? Could the purity of his wife be paid for by a few paltry dollars? Could that course afford any adequate satisfaction for the injury inflicted upon him? If an individual comes into your house, and lies upon your bed, against your will, he commits a trespass, and you can repel him by force. If an individual comes into your house, and lies with your wife, and robs her and you of that which cannot be restored, and for which no recompense can be made, can you not repel this invasion by force? Can your wives be used with impunity when your furniture cannot? What furniture for your homes like a wife!

This brings me to the last of the three propositions advanced in this connection, and that is, that there are certain

relations to which the Divine law attaches the greatest responsibilities and which it invests with commensurate powers. Of these, the relations of parent and child—and husband and wife are the most hallowed—the most cherished. It may not be the right of a brother, probably, to slay in the defense of a sister, unless he should be present at the time an offense was attempted against her person—because the attachment which connects a brother with a sister is one of love—they come from the same parents. The relation, however, which exists between parent and child, and husband and wife, is not only one of love, but of protection. For such relations, the Divine law has created the duty of protection, and the right to kill in the discharge of that duty is a proper one, and cannot be questioned by a human tribunal—at least, provided the circumstances under which the killing takes place are such as not to denote that extreme malice of the heart against which social laws are designed to protect us.

It was this idea of inferiority on the part of the wife to the husband which made the act of the wife, where she killed the husband, what the common law, in olden time, denominated *parva proditio*, petit treason. High treason, at common law, was rebellion against the sovereign, insubordination toward the Government—but petit treason was the insubordination of the wife to that yoke which her relations require her to wear, as it were, upon her neck. The rising of the wife against the husband was as much considered the rising of an inferior against a superior, as the rising of a subject against the sovereign; and the law, by way of characterizing the enormity of the act on her part, denominated it petit treason, in analogy to that offense which, when attempted against the Government, constituted high treason. The law, in this respect, is founded upon the Divine law, for the mandate of the Bible, to wives, is, "Love your husband, obey them, submit yourselves unto them." The husband is the protector—the master of the wife. Her sex is supposed to render her unable to protect herself, and hence it is the duty of the strong arm of the man to defend himself and his wife against the wrongs which



may be inflicted upon them, either with the connivance of the wife, in which case she is to be regarded as the slave of her own frailty, or as the result of violence on the part of another.

We know that it has been said, "Frailty, thy name is woman." With all our exalted conceptions of the perfection of female character, who is not compelled to acknowledge its extreme fragility? And it is because of this inability to resist herself and others, we find it written in the revealed Word of Heaven that woman is to be placed under the protection of man. I hold it as a principle, that he who gains the affections of the wife in defiance of the authority of the husband commits as great a crime against that husband, as if by force he had taken her person. It is, therefore, the sacred duty of the husband to look to the affections of his wife, to control them, and, above all, to see that they are not stolen from him by the insidious practices or machinations of the adulterer. He is the owner of them, and bound to secure them against the weakness of female nature. It is upon this principle and upon this obligation, the institution of marriage is created. Woman is the weaker vessel; man is the stronger vessel, and it is the duty of the man to make up for the shortcomings of the woman. In guarding the wife's honor, the husband guards his children. He owes it to them, to keep the stigma of her disgrace from them!

As a matter of mere legal knowledge, I would call the attention of the Court to the fact that since the statute of *circumspecte agatis*, passed in the 13th year of the reign of Edward I., the common law courts in England have not had, nor have they entertained, jurisdiction of adultery, as a distinct offense. Whatever may have been their jurisdiction before that, over adultery, as a separate offense, they have asserted no jurisdiction since. I have copied the provision of this statute upon my brief, which, as it has been extracted from 2 Bacon's Abridgement 171, under the head of "Ecclesiastical Courts D.," I will read. The words *circumspecte*

*agatis*, "use yourselves circumspectly," are, as it will be seen, fully explained by it. It proceeds:

"The King to his Judges sendeth greeting.—Use yourselves circumspectly in all matters concerning the Bishop of Norwich and his Clergy, not punishing them if they hold a plea in Court Christian, of such things as be merely spiritual, that is, to-wit: of penance enjoined by prelates for deadly sin, as fornication, adultery, and such like, for the which sometimes corporeal penance, and sometimes pecuniary is enjoined, especially if a freeman be convict of such things. Also, if prelates do punish for leaving the churchyard unclosed, etc.; item, if a parson demand of his parishoners oblations, or tithes, due or accustomed, etc.; item, if a parson demand mortuaries, etc.; item, if a prelate of a church or patron, demand of a parson a pension due to him, etc., all such demands are to be made in a spiritual court, and for laying violent hands on a clerk; and in cause of defamation, it hath been granted already, that it shall be tried in the spiritual court, where money is not demanded; but a thing done for punishment of sin, and likewise for breaking an oath, in all cases afore rehearsed, the spiritual judge shall have power to take knowledge notwithstanding the king's prohibition."

Here is the declaration of the British Parliament that adultery is a deadly sin. At the time of the passage of this statute, adultery was an offense at the common law, and fell within the cognizance of the common law tribunals, but after the passage of this statute, it was transferred to the cognizance of the spiritual courts. By the common law of Maryland, which is the law of this district, adultery is not an offense; for the common law, which was in existence at the time of the creation of Maryland as a State, did not recognize it as such; and as we have no spiritual courts in this country, as in England, it needs the interposition of a statute to make adultery an offense punishable as such by the ordinary legal tribunals.

In this connection, permit me to refer to the case of Anderson (5 Rand. 627). This whole subject was discussed and considered in that case. A party had been convicted in the court below of enticing away for the purpose of prostitution and carnally knowing a female a little over sixteen years of age. There was a statute in Virginia making it a crime to in-

veigle away a female within the age of sixteen years, from the possession of the person in whose custody she was. The deflowering was made a more serious offense. The General Court of Virginia reversed the conviction, holding that the statutory offense must be punished according to the statute, and that the female in question, being over the statutory age, was not within its protection, and that no offense was predicable, as at common law, adultery by itself, since the statute of *circumspecte agatis*, not being a common law offense. The opinion of the Court will be found to be a well-considered one, the doctrine being held to be that the adultery must be "combined with circumstances, which, beyond the mere criminality of the simple fact, were calculated to make it injurious to society." Instances of what the court meant were given, as, where the fact was committed in a street or highway—or as the result of a conspiracy, and the like—where the circumstances attending the fact "imported a common law misdemeanor." It was held in this case that the statute in question occupied the whole ground, and was not cumulative.

In *State v. Cooper* (16 Vt. 551) it was held by the Supreme Court of Vermont that adultery is not at common law a felony or crime, to be punished in the common law courts. In this case, a party was convicted upon an indictment which charged him with breaking and entering a dwelling house in the night time, with intent to commit adultery. By a statute of Vermont, it was burglary to enter a dwelling house at night, with intent to commit murder, etc., or any other felony. To sustain the conviction of the court below, the Appellate Court was called upon to hold that adultery was a felony at the common law. The conviction was reversed and judgment arrested, because adultery was held not to be a felony, nor any offense at common law, punishable by common law jurisdictions.

In reference to the statute, *circumspecte agatis*, we are told that "the Bishop of Norwich and his clergy," are only put for an example, and that it extended to all the bishops within the realm. Blackstone (vol. 4, pp. 64, 65) informs us that in

1650 during the commonwealth, adultery in England, was a capital offense. The spiritual courts—*Curias Christianitatis* (as they were called)—acted *pro salute animae*, for the safety of the soul, and punished what were called spiritual sins by penance, contrition and excommunication, or by a sum of money to the officers of the court, known as commutation of penance.

Wharton on American C. L. (Sec. 2639 to Sec. 2647) refers to the statutes of four States, namely, Massachusetts, Pennsylvania, Virginia and Ohio, upon the subject of adultery. These appear to be the only States of the Union which, by express legislation, have made it an offense cognizable by the ordinary courts of justice.

I come now, gentlemen of the jury, to the discussion of the other parts of this case, and I urge upon you all through this trial to bear in mind that you are sitting here to pronounce the estimate of an American jury upon the value of a husband's honor. That is the great principle of your verdict, and as it is rendered in this particular, so will you strike terror into the heart of the adulterer, or embolden him in his course. If for the prosecution, in that verdict is contained your written commission to him. You send him out emboldened by it to repeat his crimes, telling him that if he is slain for his offense, the man who dares to take his life shall forfeit his own for the act. You strike the deepest blow at the root of morality which has ever been given to it, on this continent, by the action of an American jury.

It is a well settled legal principle, that every man's house is his castle—for the security and repose of himself and his family. The word "castle" is a term of the law. It does not signify that a man keeps his family within battlemented walls—but it is used as a figure of speech to denote that his residence, though it be a hut which can neither keep the rain nor sunshine from penetrating its roof, is nevertheless, for every moral and legal purpose, as much a fortress as if it were constructed for one. The thatched roof, the humblest hut that rears itself to the most limited height in the face of heaven,

is as much a castle for the protection of a man's wife and family as though it were a castle in reality—and whoever enters it, even though it be by his invitation, in the guise of a friend, but in reality as a seducer, is a trespasser upon that home. That is the principle I want to strike home to your hearts upon this occasion. Under such circumstances you have the same right to eject him from that castle, that you would have had he entered against your will. It is purity of heart only which entitles him to embrace the privilege you have accorded to him.

One of the most aggravated features of this case is, that the deceased entered the abode of Mr. Sickles as his friend. We will show you by the testimony that they stood almost as close together as did those two human beings who were connected by a link which was born with them, and which rendered them indissoluble. The hearts of these two human beings had beaten almost against each other. If I may so speak, their hearts seemed to have almost alternated in their pulsations, at least so far as their social or personal acquaintance was concerned. If, therefore, when Mr. Sickles invited Mr. Key into his house, Mr. Key accepted the invitation for the purpose of accomplishing the downfall of his wife, he was as much a trespasser as though he had entered the house against the will of Mr. Sickles altogether. When a husband extends an invitation to his friend to visit his family circle, he in effect requests him to keep back all uncleanness. Which of you would tolerate the presence of a man whom you had invited to your fireside as a friend—believing him to be, relying upon him as a friend—but whom you found canvassing the charms of a wife or daughter, to excite the sensuality of his nature? The man that comes to your abode with an unclean heart, and looks with lustful eyes upon yours, is a trespasser—and you can, nay, you ought to drive him back with violence!

Another well-settled principle is, that the person or body of the wife is, in a measure, the property of the husband. If violated against her will, it is a felony. She can defend it.

So can her husband. So can a stranger. Serjeant Foster (Crown Law, p. 247), says:

"A woman in defense of her chastity may lawfully kill a person attempting to commit a rape upon her. The injury intended can never be repaired or forgotten. And nature, to render the sex amiable, hath implanted in the female heart, a quick sense of honor, the Pride of Virtue, which kindleth and inflameth at every such instance of brutal lust. Here the law of self-defense plainly coincideth with the dictates of nature."

This is one of the instances in which, according to the author, nature and social duty co-operate.

If the wife is deflowered, with her consent, in the presence of her husband, he can act, even to the extent of killing, upon the principle of *se et sua defendendo*. I now refer to the case of Ryan (2 Wheeler's C. C. 47). This was an indictment for murder, found against the husband for killing the alleged adulterer of his wife. It was tried before a court of whom the late Recorder Riker was one—a judge not unknown to fame, and whose erudition and experience in the Criminal Law certainly entitle his judicial acts to the highest consideration. The facts were these: Ryan returned home from his labor, and found his children (one but a year old) crying on the floor, his wife having gone out and left them. He had suspected her before of improper intimacy with the deceased (Finley). He went to Finley's room, heard his wife's voice within, and knocked at the door. After some delay it was opened. He entered, and found two men there, but his wife had gone. He turned away, and while talking with a man below, saw his wife come downstairs. She was a little intoxicated, and they went home together. About ten o'clock at night, Ryan again went to Finley's door, and, looking through the keyhole, saw Finley's arms around his wife, she lying on the floor. He knocked. Finley opened the door, forced Ryan to come into the room, where they drank together. Finally, Ryan and his wife, accompanied by Finley, went home. An hour after they entered Ryan's apartments, the noise of heavy blows was heard, which proved to be Ryan killing Finley.

Ryan endeavored to make his escape, but was arrested on the street; and on his arrest, he said to the watchman, "I killed him, and I meant to kill him; he has deprived me of my wife, and I have deprived him of his life. I am willing to suffer for it." Ryan, all through, showed a perfect consciousness of what he was about, and even deliberation in what he did; but the case is a striking instance of how far courts and juries will condescend to acts prompted by a violation of our most sacred rights. In submitting the case to the jury, the Court remarked that it was for them, under all the circumstances, to say whether

"The crime charged upon the prisoner was murder or manslaughter, or justifiable homicide; and observed, if the jury were of opinion that the prisoner committed the act while the deceased was in criminal intercourse with his wife, it would not be murder, or even manslaughter, but would be justifiable homicide, *se defendendo*. Her consent would be of no avail to increase or extenuate the crime, if in her husband's presence. If, however, the jury should believe there was a criminal connection between the deceased and the wife of the prisoner, as there was no positive, although there was presumptive evidence of it, it would be for them to decide, from the circumstances, whether the homicide was committed after time for reflection had been given or not."

The District Attorney, in Ryan's case, did not contend for contrary doctrines. The following is an extract from his opening address to the jury:

"If a man surprised another in the act of adultery with his wife, and killed him instantly on the spot, the law pronounced such killing to be manslaughter; but if the stranger was attempting a rape, and the wife cried out, and the husband entered and killed him, it was justifiable homicide, *se defendendo*; nor could the consent of the wife, if in the presence of the husband, alter the offense from a rape; but if the adulterous act had been committed, and the husband, after time intervening sufficient for reflection, attacked and killed the adulterer out of revenge, the killing in such case is murder."

Ryan's case was tried before a Court of Oyer and Terminer at the City of New York, in September, 1823. It is law there, and no Christian court or jury can refuse to subscribe to its reasonableness or propriety.

There are seven questions, gentlemen of the jury, which, in the judgment of the counsel for the defense, it is deemed appropriate to present for consideration.

1. As to how far the Government is bound to make out a case against the defendant. What it must prove, of what the jury must be satisfied, and how satisfied, before a conviction of any offense can be rendered.

2. As to how far the old rule that malice is presumed from the fact of killing obtains at the present time in the administration of criminal justice, and how far such a presumption is controlled by the great fundamental presumption of the law that every one is supposed or deemed to be innocent until proved to be guilty.

3. As to how the law esteems adultery as a provocation, and how it regards it in connection with an act caused by it.

4. The reason, or principle, or meaning of the old rule that homicide by a husband, on discovering his wife in the act of adultery, either by slaying the adulterer or adulteress, is manslaughter.

5. What was the effect of the rule which lowered or reduced such a killing to manslaughter—to show that it was equivalent or tantamount to an acquittal.

6. How far the provocation furnished by the deceased to the defendant acted upon or affected the defendant's mind, in reference to exonerating him from all the legal consequences for or by reason of the killing in question. Whether while the influence of the provocation remained, it did not render the defendant for the time being, insane. Whether it did not operate such a state of mental unsoundness, as to relieve the defendant's (alleged) act of and from all criminality—supposing the act to have been immediately and directly prompted or occasioned by it. In other words, whether this case is one of pardonable or excusable unsoundness of mind, or of wanton or ungovernable passion. Whether the defendant, not being to blame for the provocation, the frenzy, or its results can be holden for a crime.



7. Whether, viewing the case as one of ungovernable passion—as one of resentment produced by passion—there was a sufficient time for the defendant's passion to cool, and for reason to get the better of the transport of passion, so that his subsequent acts were deliberate, before the mortal wound was given to the deceased.

As to the first of these questions—if the Court please—as to how far the Government is bound to make out a case against the defendant, we attack almost throughout the theory of the prosecution. We say that the case must be made out by the prosecution, and that it must be made out by proof, and not by presumption. We say that the old rule of law, that the killing was presumptive evidence of malice, no longer belongs to the law, for it is, upon facts, and not upon presumptions, that a man is to be condemned for an offense involving his life or liberty. Presumptions are mere rules of evidence, and juries cannot convict upon presumptions unless they conscientiously believe that the facts embraced in them do actually exist. They cannot subject the deliberations or convictions of the jury, if the jury believe or think them to be unwarranted.

As I understand the argument of the learned counsel for the Government, it is this: that the law supposes from the very fact of killing that there was *malitia praecogitata* in the heart. If I were sitting as a juror, and all the evidence before me was that one man had simply slain another, I should infer that the slayer was insane: but the argument of the prosecution is that you must infer that the slayer was in the possession of reason from the fact of his killing. Nominally it may be law, but it is not the practice, and no prosecutor should ever be permitted to give a case of this kind to a jury on the mere proof of the fact of killing. If the rule exists at all, it exists in name and not in reality.

Upon this point I ask the attention of the Court to the case of McCann (2 Smith, N. Y. 58). I might feel a delicacy in citing the decisions of my own State, as advisory to this Court, in reference to the legal questions involved in the pres-

ent proceedings were it not for the kind manner in which your honor has already spoken of the decision of our Supreme Court in the case of Freeman (4 Denio 9), stating it to be one of the most reliable authorities upon the law of insanity your honor had met with. Our Court of Appeals contains judges of equal calibre with those who passed upon the case of Freeman, and I doubt not that one of their judgments will meet with the same regard at the hands of this court, as the opinion of the Supreme Court in that case.

We insist most strenuously that it is the duty of the prosecution, if they charge that Mr. Sickles, in a spirit of wantonness, excited by the provocation which Mr. Key had given him, slew Mr. Key, to prove it. If they have not proved it before the court and jury their case must fall to the ground.

The cardinal question presented in McCann's case, was as to how far insanity, when relied upon as a defense, must be established to be sustained—and under what rules the testimony in support of it should or must be put to the jury. The judgment of the court will be found to explode many of the old notions which have been uniformly invoked to prejudice such a defense in the estimation of juries and is a recent instance of a court declining to bow to the errors, however ancient, of old rules! I read from the opinion of Bowen, J. (p. 62).

"It is a general rule, applicable to all criminal trials, that to warrant a conviction, the evidence should satisfy the jury of the defendant's guilt beyond a reasonable doubt—and it has been held that there is a distinction in this respect between civil and criminal cases. This rule is based upon the presumption of innocence, which always exists in favor of every individual charged with the commission of crime. It is also a rule well established by authority, that where, in a criminal case, insanity is set up as a defense, the burden of proving the defense is with the defendant, as the law presumes every man to be sane. But I apprehend that the same evidence will establish the defense which would prove insanity in a civil case. The rule requiring the evidence to satisfy the jury beyond a reasonable doubt is one in favor of the individual on trial charged with crime, and is applicable only to the general conclusion, from the whole evidence, of guilty or not guilty."

I read also from the opinion of Brown, J. (p. 68) :

"It (speaking of murder) is thus defined by Sir Edward Coke (3 Inst. 47): 'When a person of sound memory and discrimination unlawfully killeth any reasonable creature in being, and under the king's peace, with malice, aforethought, express or implied.' It is to be remarked that every member of this sentence is of the weightiest import in determining the constituents of the crime. The killing must have been effected by a person of sound memory and discretion. It must have been an unlawful killing; that which is deprived of life must have been a reasonable creature in being, under the king's peace, and the killing must have proceeded from malice, expressly proved, or such as the law will imply, which is not so properly spite or malevolence to the deceased as any evil design in general; the dictate of 'a wicked, depraved and malignant heart.' Every one of these things must have existed, in order to make out the crime, and they must be proved or presumed upon the trial to have existed, or the prisoner is to be acquitted. They are primarily a part of the case for the prosecution, to be established to the satisfaction of the jury beyond any reasonable doubt. The law presumes malice from the mere act of killing, because the natural and probable consequences of any deliberate act, are presumed to have been intended by the author. But if the proof leaves it in doubt whether the act was intentional or accidental, if the scales are so equally balanced that the jury cannot safely determine the question, shall not the prisoner have the benefit of the doubt?"

After referring to the expressions of a number of eminent judges, upon insanity as a defense, Brown, J. (p. 70), proceeds:

"Whatever has fallen from these eminent men will doubtless be accepted with the most profound respect; but what they have said would be entitled to greater weight upon the present occasion, did it distinctly appear that their attention was directed to the circumstance that, notwithstanding the legal presumption, the sanity of the prisoner's mind is, under all the definitions of the crime, to be made out affirmatively upon the trial as a part of the case for the prosecution."

It will be my duty presently to trace out the origin of the rule as to malice being presumed from the mere fact of killing. It was a rule favored in the time of special verdicts, when juries did not pass upon the intention at all, and when judges for the purpose of enlarging the royal revenue—the "*census regalis*"—made crimes in every case, to multiply forfeitures to the Crown. We will trace out the rule, though

we could stand before the jury this day, and demand the acquittal of our client. Enough is out now to show the motive of his act—and to pierce the heart that was not cut from the “unwedgeable, gnarled oak;” for in the agony of his mind, when the deed was done, and he was relapsing into his sanity, in the midst of his grief, he exclaimed: “He (referring to Key) has dishonored my house; he has defiled my bed.” It was the dominant sentiment of his bosom. Twelve Indians, upon whom the light of civilization had never broken, would repel with indignation the idea of convicting a man of a capital offense upon the testimony which has been placed before you by this prosecution.

The judgments of the courts below, in McCann’s case, were unanimously reversed, because “at variance with sound reason, and the just and humane principles of the common law.” The law has some humanity about it. What, gentlemen of the jury, is its cardinal presumption? As you heard me tell the honorable judge upon the bench, that every man is innocent until proved to be guilty. Not so, says the counsel for the Government. The law presumes, because Mr. Sickles discharged the contents of his pistol into the body of Mr. Key, that he is guilty. What is the great corner-stone of evidence in criminal cases, if it is not the legal concession of the innocence of the accused, until the contrary is made manifest. And yet, here, this presumption is to be dethroned and a party is to be taken to be guilty, because he has been put upon trial; and instead of the prosecution making out a case against him, he is to be compelled to establish that he is not amenable for the crime of which he has been accused. The utmost effect of the rule the Government reposes upon, is to prevent the prosecution (if I may so speak) from being non-suited. It is a rule of evidence, but it is not a rule which is to govern the jury in their verdict. The law supposes, from the killing, that certain facts exist; but are the jury to find that they exist, because of this mere presumption. What is the oath of a juror? It is that “you will true deliverance make upon the evidence.” “Not so,” says the counsel for the Government, “but upon the presumptions of the law. It

is no matter whether the fact exists—the law presumes it to exist, and that is the ground on which the oaths of the jury rests.” All that can be contended for by the counsel for the Government is that the Court cannot non-suit or dismiss the prosecution for resting upon legal assumptions; but the jury are, nevertheless, to go behind these assumptions, and see whether or not the facts are in accordance with them. Their oaths are not redeemed unless they can look their Maker in the face, and, with their hands upon their hearts, say that every fact included in the verdict they render is clearly proved by the testimony adduced before them!

As to the second of the questions I stated to the Court—as to how far the old rule, that malice is presumed from the fact of killing, obtains at the present day in the administration of the criminal justice of our country—I now proceed to the discussion of it.

Upon this point I desire to call the attention of the Court to Mawgridge’s case (17 Howell State Trials 57). This authority shows that this rule originated under circumstances which do not now exist. From the opinion of Chief Justice Holt, it appears that at the time England was overrun by the Danes, those who were “to the manor born” were, of course, opposed to the incursion of foreigners, and hence the Danes were constantly being murdered. In order to prevent these murders or assassinations, wherever a Dane was killed the alleged murderer had to be produced within a certain time, and if not produced, the vill was fined, and if not able to pay, the fine was levied upon the hundred.

“Though this law” (says Chief Justice Holt) “ceased upon the expulsion of the Danes, yet William the Conqueror revived it for the security of his Normans, after he had confirmed King Edward the Confessor’s Laws.” Before the statute of Marlebridge (52 H. 3), “if a man was found to be slain, it was always intended—1. That he was a Frenchman. 2. That he was killed by an Englishman. 3. That the killing was murder. 4. If any one was apprehended to be the murderer, he was to be tried by fire and water, which was extended beyond reason and justice in favor of the Normans; but if an Englishman was killed by misfortune, he that killed him was not in danger of death, because it was not felony. 5. If the malefactor was not taken, then the country was to be amerced.”

The statute of Marlebridge relieved the man-slayer of his ordeal trial, and the country of its amerciamment, where a Frenchman was killed by misfortune. The fine which was put upon the vill or hundred, was called "murdrum," and afterwards came to signify or denote the crime itself "murder". It was the presumption, namely, where a person was found to be slain (in the absence of proof to the contrary), that the person killed was a Frenchman, that he was killed by an Englishman, and that the killing was murder, upon which the rule implying malice, from the mere fact of killing was originally founded, and from which it originally sprang.

It was a rule which multiplied offenses; for the more numerous they were, the more forfeitures were multiplied, and the more the revenue of the Crown increased. These forfeitures constitute the sixteenth branch of the king's ordinary revenue—the census regalis—as enumerated in Blackstone's Commentaries. The mode of obtaining money, according to that writer, was no more regarded than its use when obtained. Even deodands, which were intended to be "an expiation for the souls of such as were snatched away by sudden death," and should have been given to "Holy Church," were perverted from their original design, and granted "by the king to particular subjects as a royal franchise."

In the State of New York this rule is completely exploded; and if a district attorney in that State were to prove nothing beyond the killing, the Court would direct the jury to acquit the prisoner upon the spot. I read from the case of McCann (p. 65):

"It certainly is true that sanity is the normal condition of the human mind, and in dealing with acts, criminal or otherwise, there can be no presumption of insanity. But it is not true, I think, upon the traverse of an indictment for murder, when the defense of insanity is interposed, and the homicide admitted, that the issue is reversed and the burden shifted. The burden is still the same, and it still remains with the prosecution to show the existence of those requisites or elements which constitute the crime; and of these, the intention or *malus animus* of the prisoner is the principal. The doctrine of the charge (i. e., of the judge at the trial) proceeds upon the idea that the homicide is, *per se*, criminal; that

the mere destruction of human life by the act of another is, without any other circumstance, murder, or some of the degrees of manslaughter. 'The fact of killing,' says the judge, 'is admitted; that the act was done by the prisoner, is not disputed; thus, the issue is really reversed from the usual one.' It is doubtless true, that when the killing by the prisoner is established by proof, the law presumes malice, and a sufficient understanding and will to do the act. The malicious purpose, the depravity of heart, the sufficient understanding and will must, however, actually exist. They are each of them, as much of the essence of the crime as the act of killing. The rule which presumes their existence is a rule of evidence, and nothing else, and when the law presumes their existence, it recognizes and demands their presence as essential to constitute the crime. The jury must conscientiously believe they exist, or else they cannot convict. The killing of a human being by another is not, necessarily murder or manslaughter. It may be either excusable or justifiable. It may have been effected under either of those conditions referred to by the elementary writers, in which the will does not join with the act, and then it is not criminal."

It is no longer true, even when the defense of insanity is interposed to the presumptions of an indictment and the homicide is admitted, that the issue is reversed and the burden shifted to the defense, as is the doctrine of the counsel for the Government here. The burden is the same when such a defense is attempted, and it still remains for the prosecution to show the existence of the requisite elements to constitute the crime.

A malicious purpose and depravity of heart, are, in this case, as much of the essence of the crime, as the act of killing itself, and the jury must conscientiously believe they existed. Did the will join with the act, or was Mr. Sickles, at the time of this homicide, a mere creature of an impulse or instinct which he could not resist—carried forward like a mere machine to the consummation of this so-called tragedy? It may be tragical to shed human blood, but I shall always contend that it is no tragedy to take the life of an adulterer. His crime removes the heinous character of his punishment, and he dies as justly as those men who were executed yesterday within the limits of the State of Maryland, within a few miles of this court room. What was their offense? It was no higher than the offense of the deceased. They had shed

human blood. He had overturned the divine institution of marriage, created and reared by the hand of the Almighty!

And here I desire to make this additional suggestion. I understand the rule to be that where the prosecution prove the declaration of a prisoner, that that declaration is to be taken as true, until, or unless they show, by evidence, that it is false. Now, what is the evidence in this case on the part of the Government? It is that Daniel E. Sickles declared that Key had defiled his bed, and that, under the influence of the frenzy consequent upon that fact, he had taken his life. Where is the testimony which refutes the truth of that declaration? Have the prosecution shown that Key did not pollute the wife of Daniel E. Sickles, or do they throw themselves upon the jury and concede that that was the fact? We might with safety put a speedy period to this investigation, if such is the position of this case before the jury. Our learned friend on the other side is very ingenious; but is Daniel E. Sickles to be fitted and cut into a conviction of murder? Is it by cutting out this part, or that part of the truth, or is it upon the morality of the case, we stand in this court, awaiting the action of the jury? How would you feel, if the law were to tie a handkerchief over your eyes, and close your ears, and compel you to render a verdict, while your faculties or perceptions were not within your own control?

The prosecution have started in the slough, and how are they going to get out? Though, in this aspect of the matter, we are not bound to show the adultery, we will put it before the jury in all its disgraceful and disgusting details. Not only will we show that Key was the friend of Mr. Sickles, but that, as such, he was the violator of a confidence the most sacred. The treachery of a friend is bad enough alone, but when the perfidy reaches the bosom companion of one's life, it becomes doubly damned. I believe in the maxim, *De mortuis nil nisi bonum*—"Speak not of the dead, unless you mention them favorably." It is said:

"The evil that men do lives after them,  
The good is oft interred with their bones."



It is verified here, but the evil Key has done is not brought into this case gratuitously for the purpose of aspersing his memory. I would leave him where he slumbers, but he is before us as a fact; his conduct is here to be reviewed; and, while we respect the memory of the dead, we must not forget that we owe a sacred and important duty to the living.

This brings me, may it please the Court, to the third question proposed by me for consideration, and if at any time I become more tedious in the discussion of these questions than the Court desires, I will take it as nothing more than kindness if your Honor will so intimate. I have no pride to gratify here. If I can accomplish the deliverance of my friend, the measure of my gratification is not only full, but overruns; and if I am tedious to the jury at any point, they too should check me. This brings me, I say, to the third question, which involves the heinousness of the crime of adultery—as to how the law estimates adultery as a provocation, and how it regards it in connection with the act caused by it. In its consideration, I shall present it in two aspects: first, in reference to the character of the crime as declared by the Bible, for we build upon that as to its heinousness; and second as it is estimated by the common law.

The first branch of the inquiry, then, is as to the heinousness of the crime as declared by the Bible; and it ought to be some recommendation of the defense, that it is able to build in part upon the Good Book. Most cases if tested by that standard, would hardly be able to pass through such an ordeal. The first citation I make from the Bible in reference to the heinousness of adultery, is Genesis, chapter ii, verses 23, 24:

When the Almighty caused a deep sleep to fall upon Adam, and took one of his ribs and from it made a woman, he brought her unto Adam:

“And Adam said, This is now bone of my bone and flesh of my flesh; she shall be called Woman, because she was taken out of man. Therefore shall a man leave his father and his mother and shall cleave unto his wife, and they shall be one flesh.”

What was Mr. Key's offense? He parted this one flesh. He committed an act as much against the Bible itself as though he had divided the body of Mr. Sickles itself in twain. He could not have made a division which was more in the face of the Good Book than when he divided man and wife.

The Saviour, when in the coasts of Judea, used almost the same language when the Pharisees sought to tempt him on the subject of divorcement.

It is proper for me to say, that, in the preparation of this part of my brief, I have received some assistance from one not a counsel on the part of the defense; for, to prepare it, would require a greater familiarity with the Bible than is ordinarily possessed by others than those whose duty it is to preach it.

I cite from Matthew, chapter xix, verse 6, where the Saviour says:

"Wherefore they are no more twain but one flesh. What, therefore, God hath joined together, let no man put asunder."

I next refer to Genesis, chapter xii, verses 18, 19: When Abraham went into Egypt on account of the famine, Sarai his wife passed as his sister. He feared death on her account. The princes of Pharaoh saw her and commended her to Pharaoh, and she was taken into his house. The Lord plagued Pharaoh and his house with exceeding great plagues.

Here was a direct visitation for the offense of adultery, because of Pharaoh taking Abraham's wife into his house.

"And Pharaoh called Abram, and said, What is this that thou hast done unto me? Why didst thou not tell me that she was thy wife? Why saidst thou, She is my sister? So I might have taken her to me to wife? now, therefore, behold thy wife, take her and go thy way."

The offense which drew down these plagues was committed in ignorance on the part of Pharaoh. When the real character of the relation between Abraham and Sarai was discovered, the offense was atoned for.

So when Abraham sojourned in Gerar, Sarai passed as his

sister, and Abimelech, the king, sent and took her. I refer now to Genesis, chapter xx, verses 3-7:

"But God came to Abimelech in a dream by night, and said to him, Behold, thou art but a dead man, for the woman which thou hast taken; for she is a man's wife. But Abimelech had not come near her; and he said, Lord wilt thou slay also a righteous nation? Said he not unto me, She is my sister? and she, even she herself, said, He is my brother. In the integrity of my heart, and innocence of my hands, have I done this. And God said unto him in a dream, Yea, I know that thou didst this in the integrity of thy heart; for I also withheld thee from sinning against me. Therefore suffered I thee not to touch her. Now, therefore, restore the man his wife; for he is a prophet, and he shall pray for thee, and thou shalt live; and if thou restore her not, know thou that thou shalt surely die, thou, and all that are thine."

This is to show you, gentlemen of the jury, that the very last man in reference to whose life the "soft gush of a Sabbath sunlight" should have been referred to, is the adulterer, for you have got to consider that on that day he was out ready to execute his infamous designs upon the partner of the bosom of the defendant. A more aggravated case than this could not possibly be presented.

I next refer to Exodus, chapter xx, verses 14 and 17. Here are found the ten commandments as delivered on Mount Sinai. The seventh is—"Thou shalt not commit adultery;" and the tenth is—"Thou shalt not covet thy neighbor's house, thou shalt not covet thy neighbor's wife, nor his man servant, nor his maid servant, nor his ox, nor his ass, nor anything that is thy neighbor's."

Again—to the 20th chapter of Leviticus, verse 10, where the punishment for adultery is declared:

"And the man that committeth adultery with another man's wife, even he that committeth adultery with his neighbor's wife, the adulterer and the adulteress shall surely be put to death."

Again—to the 22nd chapter of Deuteronomy, verse 22:

"If a man be found lying with a woman married to an husband, then they shall both of them die, both the man that lay with the woman, and the woman; so shalt thou put away evil from Israel."

Moses died in the year 2553 of the world, and 1451 years before Christ. He was succeeded by Joshua, who, on the Mount of Ebal, read to the people a copy of the law of Moses written on tables of stone, and it was reaffirmed to the congregation. I cite from Joshua, chapter 8, verses 30-35:

Then Joshua built an altar unto the Lord God of Israel in Mount Ebal.

As Moses the servant of the Lord commanded the children of Israel, as it is written in the book of the law of Moses, an altar of whole stones, over which no man hath lifted up any iron; and they offered thereon burnt offerings unto the Lord, and sacrificed peace offerings.

And he wrote there upon the stones a copy of the law of Moses, which he wrote in the presence of the children in Israel.

And all Israel, and their elders, and officers, and their judges stood on this side the ark and on that side, before the priests the Levites which bare the ark of the covenant of the Lord, as well the stranger as that was born among them: half of them over against Mount Gerizim; and half of them over against Mount Ebal; as Moses the servant of the Lord had commanded before, that they should bless the people of Israel.

And afterwards he read all the words of the law, the blessings and cursings, according to all that is written in the book of the law.

There was not a word of all that Moses commanded which Joshua read not before all the congregation of Israel, with the women and the little ones, and the strangers that were conversant among them.

The law of Moses then was continued by Joshua.

At this time, as the jury will remember, the Jews were under what is called a theocratic government; that is, the Deity himself was in reality their king. It was a direct government from Heaven. This is the derivative sense of the term theocratic "God-ruling." This continued until between 1095 and 1065, *ante Christum*—before Christ. Saul was their first king. They asked for a king, and that was the end of the theocratic government.

I refer now to 2 Samuel, chapter 12, verse 10. When the Israelites besieged Rabbah, David tarried at Jerusalem. He there committed adultery with Bath Sheba, the wife of Uriah the Hittite. He directed Joab to place Uriah in the fore-

front of the hottest battle before Rabbah, and then retire from him, that he might be smitten and die. This was done, and Uriah was killed. Bath Sheba had a child, which was struck sick by the Lord, and died. Nathan was sent to David, and reproved in the parable of the "rich man with many flocks and herds, and the poor man with his single ewe lamb," and a part of the reproof was this.

"Now therefore the sword shall never depart from thine house: because thou hast despised me, and hast taken the wife of Uriah the Hittite to be thy wife."

David repenting, Nathan said:

"The Lord also hath put away thy sin; thou shalt not die."

David wrote the fifty-first Psalm on this, containing the verse:

"The sacrifices of God are a broken spirit; a broken and a contrite heart, O God, thou wilt not despise."

I refer, also, to 2 Samuel, chapters 13 and 14. Amnon ravished Tamar.

"And it came to pass after this, that Absalom, the son of David, had a fair sister, whose name was Tamar; and Amnon, the son of David, loved her.

And Amnon was so vexed that he fell sick for his sister Tamar; for she was a virgin. And Amnon thought it hard for him to do anything to her.

But Amnon had a friend, whose name was Jonadab, the son of Shimeah, David's brother: and Jonadab was a very subtle man.

And he said unto him, why art thou, being the king's son, lean from day to day? Wilt thou not tell me? And Amnon said unto him, I love Tamar, my brother Absalom's sister.

And Jonadab said unto him, lay thee down on thy bed, and make thyself sick; and when thy father cometh to see thee, say unto him, I pray thee, let my sister Tamar come and give me meat, and dress the meat in my sight, that I may see it and eat it at her hand.

So Amnon lay down and made himself sick; and when the king was come to see him, Amnon said unto the king. I pray thee let Tamar my sister come and make me a couple of cakes in my sight, that I may eat at her hand.

Then David sent home to Tamar saying, go now to thy brother Amnon's house and dress him meat.

So Tamar went to her brother Amnon's house; and he was laid

down. And she took flour, and kneaded it, and made cakes in his sight, and did bake the cakes.

And she took a pan and poured them out before him; but he refused to eat. And Amnon said, Have out all men from me: and they went out every man from him.

And Amnon said unto Tamar, Bring the meat into the chamber, that I may eat of thine hand. And Tamar took the cakes which she had made, and brought them into the chamber to Amnon her brother.

And when she had brought them unto him to eat, he took hold of her, and said unto her, Come lie with me, my sister.

And she answered him, Nay, my brother, do not force me; for no such thing ought to be done in Israel: do not thou this folly.

And I, whither shall I cause my shame to go? and as for thee, thou shalt be as one of the fools in Israel. Now, therefore, I pray thee, speak unto the king; for he will not withhold me from thee.

Howbeit, he would not hearken unto her voice; but, being stronger than she, forced her, and lay with her.

Then Amnon hated her exceedingly; so that the hatred wherewith he hated her was greater than the love wherewith he had loved her; and Amnon said unto her, Arise, begone.

And she said unto him, there is no cause; this evil in sending me away is greater than the other that thou didst unto me. But he would not hearken unto her.

Then he called his servant that ministered unto him, and said, put now this woman out from me, and bolt the door after her.

And she had a garment of divers colors upon her; for with such robes were the king's daughters that were virgins apparelled. Then his servant brought her out, and bolted the door after her.

And Tamar put ashes on her head, and rent her garment of divers colors that was on her, and laid her hand on her head, and went on crying.

And Absalom her brother, said unto her, hath Amnon thy brother been with thee? but hold now thy peace, my sister; he is thy brother; regard not this thing. So Tamar remained desolate in her brother Absalom's house.

But when King David heard of all these things he was very wroth.

And Absalom spake unto her his brother Amnon neither good nor bad; for Absalom hated Amnon, because he had forced his sister Tamar.

And it came to pass, after two full years, that Absalom had sheep shearers in Baal-hazor, which is beside Ephraim; and Absalom invited all the king's sons.

And Absalom came to the king and said, Behold now, thy servant hath sheep-shearers; let the king, I beseech thee, and his servants, go with thy servant.

And the king said to Absalom, Nay, my son, let us not all now go, lest we be chargeable unto thee. And he pressed him; howbeit he would not go, but blessed him.

Then said Absalom, if not, I pray thee, let my brother Amnon

go with us. And the king said unto him, Why should he go with thee?

But Absalom pressed him, that he let Amnon and all the king's sons go with him.

Now Absalom had commanded his servants saying, Mark ye now, when Amnon's heart is merry with wine; and when I say unto you, Smite Amnon, then kill him; fear not; have not I commanded you? Be courageous and be valiant.

And the servants of Absalom did unto Amnon as Absalom had commanded. Then all the king's sons arose, and every man gat him upon his mule and fled.

And it came to pass, while they were in the way, that tidings came to David, saying, Absalom hath slain all the king's sons, and there is not one of them left.

Then the king arose, and tare his garments, and lay on the earth, and all his servants stood by with their clothes rent.

And Jonadab, the son of Shimeah, David's brother, answered and said, let not my lord suppose that they have slain all the young men, the king's sons; for Amnon only is dead: for by the appointment of Absalom this hath been determined from the day that he forced his sister Tamar.

Now, therefore, let not my lord the king take the thing to his heart, to think that all the king's sons are dead; for Amnon only is dead.

But Absalom fled. And the young man that kept the watch lifted up his eyes and looked, and behold, there came much people by the way of the hillside behind him.

And Jonadab said unto the king, behold, the king's sons come; as thy servants said, so it is.

And it came to pass, as soon as he had made an end of speaking, that, behold the king's sons came, and lifted up their voice, and wept, and the king also and all his servants wept very sore.

But Absalom fled, and went to Tamai, the son of Ammihud, king of Geshur. And David mourned for his son every day.

So Absalom fled and went to Geshur, and was there three years.

And the soul of King David longed to go forth unto Absalom: for he was comforted concerning Amnon, seeing he was dead."

Absalom returned to Jerusalem, where he dwelt two full years, and saw not his father's face. When the king sent for him, he came to him, "and the king kissed Absalom."

You will perceive, gentlemen of the jury, that this killing took place two years after the offense which provoked it was committed, and the punishment which was inflicted for the killing was, that "the king kissed Absalom!" The fate of the seducer is here shadowed forth. There is no time which out-

laws his offense! Talk of cooling time in reference to a man whose wife has been deflowered! Can any man cool over a provocation like that? A mere personal indignity is something you can cool over; but if Mr. Sickles is cool now, he is more than human!

I refer also (but rather out of order), to Genesis, chapter xxxiv., verses 1, 2, 7, 25, 30 and 31:

"And Dinah the daughter of Leah, which she bare unto Jacob, went out to see the daughters of the land.

And when Shechem the son of Hamor the Hivite, prince of the country, saw her, he took her, and lay with her, and defiled her.

And the sons of Jacob came out of the field when they heard it; and the men were grieved, and they were very wroth, because he had wrought folly in Israel in lying with Jacob's daughter, which thing ought not to be done."

The sons of Jacob refused to betroth Dinah to Shechem, unless he was circumcised. Hamor and Shechem returned to the gate of their city, and communed with the men thereof, and they and all the males that went out of the city were circumcised.

"And it came to pass on the third day, when they were very sore, that two of the sons of Jacob, Simeon and Levi, Dinah's brethren, took each man his sword and came upon the city boldly, and slew all the males."

Hamor and Shechem were slain, and their city pillaged by the sons of Jacob. Jacob heard of it.

"And Jacob said to Simeon and Levi, Ye have troubled me, to make me stink among the inhabitants of the land, amongst the Canaanites and the Perizzites; and I being few in number, they shall gather themselves together against me, and slay me; and I shall be destroyed, I and my house.

And they said, Should he deal with our sister as a harlot?"

I refer now to the prophecies of Ezekiel, chapter xviii, commencing at verse 5. This prophet flourished 588 years before the birth of the Saviour.

But if a man be just, and do that which is lawful and right.

And hath not eaten upon the mountains, neither hath lifted up his eyes to the idols of the house of Israel, neither hath defiled his neighbor's wife, neither hath come near to a menstruous woman.



And hath not oppressed any, but hath restored to the debtor his pledge, hath spoiled none by violence, hath given his bread to the hungry, and hath covered the naked with a garment.

He that hath not given forth upon usury, neither hath taken any increase, that hath withdrawn his hand from iniquity, hath executed true judgment between man and man.

Hath walked in my statutes, and hath kept my judgments, to deal truly, he is just, he shall surely live, saith the Lord God.

If he beget a son that is a robber, a shedder of blood, and that doeth the like to any one of these things.

And that doeth not any of those duties, but even hath eaten upon the mountains, and defiled his neighbor's wife.

Hath oppressed the poor and needy, hath spoiled by violence, hath not restored the pledge, and hath lifted up his eyes to the idols, hath committed abomination.

Hath given forth upon usury, and hath taken increase: shall he then live? He shall not live. He hath done all these abominations, he shall surely die, his blood shall be upon him."

My next reference is to the prophetesies of Malachi, chapter iii, verse 5. This prophet flourished about 430 years before Christ.

"And I will come near to you to judgment; and I will be a swift witness against the sorcerers, and against the adulterers, and against false swearers, and against those that oppress the hireling in his wages, the widow and the fatherless, and that turn aside the stranger from his right, and fear not me, saith the Lord of Hosts."

Under the New Testament dispensation, the precepts against adultery were affirmed by the Saviour. I refer to Matthew, chapter xix, verses 16-22:

"And, behold, one came and said unto him, Good Master, what good thing shall I do, that I may have eternal life?

And he said unto him, Why callest thou me good? there is none good but one, that is, God: but if thou wilt enter into life, keep the commandments.

He saith unto him, Which? Jesus said, Thou shalt do no murder, Thou shalt not commit adultery, Thou shalt not steal, Thou shalt not bear false witness.

Honor thy father and thy mother: and, Thou shalt love thy neighbor as thyself.

The young man saith unto him, All these things have I kept from my youth up: what lack I yet?

Jesus said unto him, If thou wilt be perfect go and sell that thou hast, and give to the poor and thou shalt have treasure in heaven: and come and follow me.

But when the young man heard that saying, he went away sorrowful: for he had great possessions."

And so in Mark, chapter x, verses 17, 18 and 19:

"And when he was going forth into the way, there came one running, and kneeled to him, and asked him, Good Master, what shall I do that I may inherit eternal life?

And Jesus said unto him, Why callest thou me good? There is none good but one, that is God.

Thou knowest the Commandments, Do not commit adultery, Do not kill, Do not steal, Do not bear false witness, Defraud not, Honor thy father and mother."

To the same effect is Luke, chapter xviii, verses 18-20.

I refer also to Matthew, chapter v, verses 27, 28:

"Ye have heard that it was said by them of old time, that thou shalt not commit adultery.

But I say unto you, that whosoever looketh on a woman to lust after her, hath committed adultery with her already in his heart"

There the Saviour, in the memorable sermon on the Mount, declared that the lust of the heart was tantamount to the passion of the body. The man who lusteth for his neighbor's wife has committed a sin which clamors for the judgment of Heaven as much as if he had soiled her body. So that you observe the policy of the Bible is to arrest the crime in its bud. It is but a step between the intention and the deed. and therefore the divine law aims itself at the motive to the deed.

\* The Apostles urged the same injunctions. Paul, in his Epistle to the Romans, chapter xiii, verses 8 and 9, says:

"Owe no man anything, but to love one another: for he that loveth another hath fulfilled the law. For this, thou shalt not commit adultery, Thou shalt not kill, Thou shalt not steal, Thou shalt not bear false witness, Thou shalt not covet; and if there be any other commandment, it is briefly comprehended in this saying, namely, 'Thou shalt love thy neighbor as thyself.'"

So, also, in the Epistle of James, chapter ii, verses 10, 11:

"For whosoever shall keep the whole law, and yet offend in one point, he is guilty of all. For he that said, Do not commit adultery, said also, Do not kill. Now, if thou commit no adultery, yet if thou kill, thou art become a transgressor of the law."

Now, the adulterer hateth his neighbor. Had Mr. Sickles any worse foe on the face of this earth than Philip Barton Key? If he had come to him and sunk his stiletto in his bosom he would have been merciful to him. He wraps himself, however, in the habiliments of friendship, and in that garb, supposing that he is masked, he commits the most frightful, and, at the same time, the most sneaking of all crimes.

These citations from the Bible prove that female purity in connection with the marriage relation is an object, in divine law, of the greatest concern; that the sanctity of the family altar must not be desecrated; that it is impiety to Heaven to violate it; and that it is piety to Heaven to defend it. If Daniel E. Sickles goes to the judgment bar of the next world with no other sin upon his head than the punishment he has put upon his wife's destroyer, he will go as well recommended as will any soul that passes from this sphere!

This brings me to the second branch of the third inquiry—the heinousness of adultery, as a provocation at the common law. The "*jus gladii*" resides somewhere. Is it with Omnipotence? Or is it confided to the hands of the injured husband? Though the law does not punish adultery as a crime, does it not stay its vengeance, when invoked against the husband who turns his own avenger?

We have seen it as it exists under the Bible. Is it not very strange that although adultery is twice forbidden in the ten commandments—although it is forbidden in terms and again forbidden in the injunction "thou shalt not covet thy neighbor's wife"—although the Almighty thought it of sufficient importance to make it the subject of two out of the ten commandments—yet, that no human law has caught up the spirit of those commandments and made it a proportionate offense. What is the meaning of that? Do you suppose that society means the adulterer shall go unpunished? No. It throws you upon the law of your heart. There is the repertory of your instincts. Go by them, and you reflect the will of Heaven, and when you execute them, you execute its judg-

ment. If this is not the reasoning of society, then society has not fulfilled its compact with Daniel E. Sickles. What was Daniel E. Sickles' agreement with society? It was that he would give up so much of his natural liberty as they gave him back a consideration for. Did he, when he joined society, place his wife beyond the protection of the law? Did he leave her at the mercy of this shameless adulterer? No, society knew that that thing would take care of itself. It left the adulterer where the will of God has left him—to be the victim of that judgment which is executed on him by Heaven through man as its instrument. If you are going to pronounce the verdict that there is no other protection to your homes than a sordid action for damages, growing out of the criminal conversation between a wife and the adulterer then your wives live in a very perilous atmosphere.

If that is all the security over your homes, let the disgrace come, and let the coins of the adulterer soothe your wounded feelings. That is a doctrine that does not prevail out of this District, and it ought not to prevail here, for the moral tone of this District, above all others sections of the country, should be a model, an exemplar to all the other parts of our confederacy.

Upon this branch of the inquiry, I refer, if the Court please, to the case of Manning, or Maddy (as it is sometimes called), 1 Ventris 158, 2 Keble 829; T. Ray. 212. The Court will notice that Manning's case was decided upon a special verdict; the intention was not put to the jury. It occurred in the reign of Charles II., nearly two hundred years ago. We defy the counsel for the Government to find a case in which a British jury ever refused to justify the homicide who either slew in the act of adultery, or when the act was so near being committed as to leave no doubt of the guilt of the adulterer. Where the jury render a special verdict, they do not pass upon the intention, which is the very essence of criminality. I have read the report of a case which was tried in this very court—the case of a brother who slew his sister's seducer—in which the learned judge told the jury that

the status of the prisoner's mind was a matter entirely for them to determine; and under that charge, which was the law, and creditable to the humanity of the court, the jury set that brother free, within fifteen minutes after the case was committed to them. I do not cite the case of Manning as a precedent, but merely to show you that when the British courts were trying to make the "*census regalis*," or royal revenues as large as possible, they felt a kind of instinctive shame, even at the burning (with an almost cold iron), of the slayer of an adulterer in the hand!

The shortest of the three reports of Manning's case is that in T. Raymond's Reports, and it is as follows:

"John Manning was indicted in Surrey for murder, for the killing of a man, and upon not guilty pleaded, the jury, at the assizes, found that the said Manning found the person killed committing adultery with his wife in the very act, and slung a jointed stool at him, and with the same killed him; and resolved by the whole court, that this was but manslaughter, and Manning had his clergy at the bar, and was burned in the hand, and the Court directed the executioner to burn him gently, because there could not be a greater provocation than this.—Hale, Ch. J., Twisden, Rainsford and Morton, JJ."

All that Manning's act was made an offense for, was to forfeit his goods and chattels to the crown, and thus augment the *census regalis*. The splendor of royalty must be supported. It was not at all times of much consequence how it was supported, and you will find—for I intend to refer to it—that Serjeant Foster, in a part of his treatise, admits the readiness judges exhibited to turn everything they could into a felony, so as to make the forfeitures to the crown as large and as numerous as possible.

At the time Manning's case was disposed of, Lord Chief Justice Hale was the presiding judge of the court, and your Honor will remember that the rule by which he guided himself, as a judge, was that, "in the administration of justice, I am intrusted for God, the king and country;" and the utmost Hale could make out of such an act as the slaying of an adulterer, was, that it was a nominal offense, requiring a slight burning in the hand, merely to conform to the law.

In the opinion of Lord Hale, in *Mawgridge's case*, 17 St. Tr. 79, it is said:

"When a man is taken in adultery with another man's wife, if the husband shall stab the adulterer, or knock out his brains, this is bare manslaughter; for jealousy is the highest rage of a man, and adultery is the highest invasion of property."

This authority proves that the greatest provocation one man can give to another, according to the concession of human tribunals, is, to seduce his wife. It is the greatest violation of right that can occur. Lord Hale says, in allusion to the slaying of an adulterer:

"If a thief come to rob another, it is lawful to kill him. (Mark the sarcasm.) And if a man comes to rob a man's posterity and his family, yet, to kill him, is manslaughter. So is the law, though it may seem hard, that the killing in one case, should not be as justifiable as the other."

Who does the adulterer rob? He puts a spurious issue into your family. He compels the offspring of your loins to mingle with bastards. He puts his bastards upon an equality with your lawful children, and they come in and share in the inheritance you leave behind you. Is not that enough to madden any man's brain who would reflect upon it for a single moment? The adulterer is worse than a thief or a burglar, says Lord Hale, "for he robs a man's posterity and his family."

Think of the District Attorney for the County of Washington coming into this court and hunting down petty criminals, and then going out of this court and compelling Heaven to turn its face from him in disgust over the enormity of his own crimes! The person to protect the home of Daniel E. Sickles the greatest malefactor that ever walked the face of the earth himself! Keeping the burglar out, that the adulterer might pass in, when the burglar could not compare, for a moment, with him in the aggravation and heinousness of his crime!

The Court is also referred to the case of *Carnegie*, same volume, page 79, in which the language used by Hale to de-

pict the aggravations of adultery, is repeated substantially in the arguments of counsel. Also to the case of Chetwynd, 18 St. Tr. 18, 306, where the doctrine that killing an adult—the counsel for the prisoner. In Hawkins, 36, it is said: erer, taken in the act, is bare manslaughter, is affirmed by

“Neither can he be thought guilty of a greater crime (i. e., manslaughter), who, finding a man in bed with his wife, etc.,—in which case the killing the assailant hath been holden by some to be justifiable. But it is certain, that it can amount to no more than manslaughter.”

Having shown you, gentlemen of the jury, by the Bible, that there can be no higher crime than that of adultery, I mean to convince you that, by the concession of human tribunals, it is the greatest provocation that can be given to a man; and the question which will then present itself to your minds is, whether, when a man receives a provocation which excites in his mind a frenzy he cannot control, he is responsible for what he does under its influence.

I now refer to Foster’s Crown Law, 298, a short discourse upon the Act of James the First. At the accession of James the First, collisions between the Scotch and English were so frequent, and killings by means of concealed weapons so common, that it became necessary to pass a special statute for the purpose of restraining occurrences of that description. The words of the statute were:

“Every person and persons who shall stab or thrust any person or persons that hath not then any weapon drawn, or that hath not then first stricken the party, which shall so stab or thrust, so as the person or persons so stabbed or thrust shall die thereof within six months then next following, although it cannot be proved that the same was done of malice aforethought; yet the party so offending, and being thereof convicted by verdict, etc., shall be excluded from the benefit of clergy, and suffer death as in case of willful murder.”

Foster says that the case of an adulterer stabbed by the husband, in the act of adultery, was not within that statute—that it was manslaughter at common law—for the provocation was greater than flesh and blood, in the first transport of

passion, could bear. That is what I want the jury to understand. It is folly to punish a man for what he cannot help doing. If you concede that the transport is such that he cannot control it, you cannot make him criminally responsible for what he does under its influence. To stab an adulterer was not to draw a weapon within the meaning of the statute of James the First, even though the adulterer had no weapon, because the statute was never meant for his protection. Although its language would embrace the act of a party who stabbed an adulterer who had no weapon drawn, yet the courts looked to the reason of the law, and held that the adulterer was beyond its protection, that it was no offence under it to draw a weapon and thrust an adulterer, even though he had no weapon drawn, for his crime made him the subject of attack, and placed him beyond the purview of the statute.

In 1 East's Pleas, 284, and let me observe that it is all important to note the language of the various authorities in laying down the principle, that the provocation of adultery is too great for human nature to bear—it is stated:

"There is indeed one species of provocation, which, though it do not amount to personal assault upon the party himself, is yet of so grievous a nature as the law reasonably concludes cannot be borne in the first transport of passion, where the injury is irreparable and can never be compensated. This is where a man finds another in the act of adultery with his wife; in which case, if he kill him in the first transport of passion, he is only guilty of manslaughter, and that too of the lowest degree; and, therefore, the Court directed the burning in the hand to be gently inflicted, because there could not be a greater provocation."

It should be borne in mind, while I am citing these authorities, that the rule making it manslaughter to kill an adulterer in the act was a rule created by the court upon a special verdict, and that no British jury ever condemned a husband for standing in defense of his wife. I now refer particularly to 1 How. St. Tr. 33, 34 and 35 of Emlyn's Preface to the 2nd edition of the State Trials, printed in 1730:

"This severity of our law, in inflicting capital punishments upon the lighter crimes of pilfering and thieving, seems the more ex-



traordinary when one considers the great indulgence shown to one of the first magnitude, and which is productive of much more mischievous consequences; I mean adultery, which, it is holden, does not by our law admit of any prosecution in a criminal way; yet, whether we consider the guilt of the offender, or the mischief done to the injured party, there is no comparison between the one and the other. What proportion is there between a private theft, perhaps of some trifle, which may soon be repaired, and the invasion of our neighbor's bed, irreparably robbing him of all the satisfaction and comfort of his family, confounding relations, and imposing upon him the charge of maintaining a spurious issue as his own? The one is often done only to allay the violence of a pressing hunger, but the other always to gratify an irregular and ungoverned lust. Nor can it with reason be pretended, that the one is a crime of a public, the other of a private nature; if the public be concerned in the preservation of the property of goods, it cannot be less so in the preservation of the more valuable rights which affect the peace and quiet of families. Is private stealing an offense against the community? The other is much more so, having a greater tendency to promote frays and quarrels, public disturbances, and breaches of the peace, from whence bloodshed and murders often ensue. What may be the reason why our laws make so light of this enormous crime, whether it be the countenance it receives from great examples, and of the commonness of the fault, or some other reason, I will not take upon me to say; but most certain it is that the laws of other nations had a different sense of it, and treated it in a severer manner: by the Mosaic law, it was always punished with death; and long before that law, it was esteemed 'an iniquity to be punished by the Judges.' By an old law of Romulus, the adulteress was to be put to death—*Adulteri convictam vir et cognati uti volent necanto*; and though afterward the civil law, *Lex Julia de Adulteriis*, punished it only (*per relegationem*) with banishment, or (*per deportationem*) with transportation into some remote island; yet, the father of the adulteress was permitted to kill both his daughter and the adulterer, and in some instances the husband had the same power; and if he chanced to use that power in a case not allowed, even then he was not to be punished with severity, but only to undergo a milder sort of punishment; but, at length, when the empire became Christian, under the reign of Constantine, adultery was made capital, *sacrilegos nuptiarum gladio puniri oportet*, and so it continued to Justinian's time, and long after. Some are of the opinion that it was so even while the empire was heathen, under the reign of Diocletian and Maximian, it being enumerated in one of their laws among the capital crimes."

When "the empire became Christian, under the reign of Constantine," adultery was again made capital! That is, when it was established on the principles of Him who spake as

never man spake, and who preached humility and meekness on earth, adultery was made a capital crime. When a community becomes Christian, it is Christian to punish adultery with death!

The atrociousness of adultery, as a provocation, is also recognized by our American legal writers. Wharton's *Am. Cr. Law* (4th ed.), sections 983, 984; Greenleaf on *Evidence*, volume 3, section 122.

This brings me to the fourth question in order, which was—as to the reason, or principle, or meaning of the old rule, that homicide committed by the husband on discovering his wife in adultery, either by slaying the adulterer or adulteress is manslaughter. Not only can the husband slay the adulterer, but if the guilty parties be together, he can pick from them and slay either or both. Now, the question, if the Court please, is this: Does this rule, which made the killing of an adulterer manslaughter or a merely nominal offense, apply only to cases where the guilty parties are caught in the fact? If so, the husband will have to wait a very long time before he becomes vested with the rights which such a rule would give him. Such a thing may have happened, but if the husband never has his right to slay the adulterer until he catches him in coition with his wife, in the natural course of things, he will never have the right at all. It has been said:

“The wren goes to 't, and the small gilded fly  
Does lecher in our sight.”

but that is almost the only instance of coition usually occurring under the eye!

Our proposition is this, that to catch the adulterer in the fact means to catch him so near the fact as to leave no doubt of his guilt. If you caught the adulterer turning out of the bed in which your wife was, the coition would not then be taking place, but would you not then be pardoned for killing him? If you caught him coming out of a room where she was, in such a state as to indicate what he had been doing, would you not then be pardoned if you killed him? You

would have the same right as if you caught them in actual coition. The question is, not as to how you catch them, but are the parties guilty, and are you satisfied and convinced of their guilt. Whether the fact actually takes place before the eyes of the husband, or he becomes satisfied of it by irrefragable proof, is perfectly immaterial. It is the provocation that works on the human breast, which the law looks to, and the provocation is the same, let the knowledge of its existence be gained as it may. We say, therefore, that the rule, reducing the killing of the adulterer to manslaughter, is figuratively expressed. It is but saying that the man who kills another for adultery, if he does it when the proof strikes home, under the passion then excited, and which is uncontrollable, incurs no other than this nominal criminality at the common law. I cannot enforce this position better than by citing from the great dramatist, from whom I quoted this morning, where he makes the caitiff Iago inflame the Moor against the supposed, but unreal infidelity of his wife. The Moor is made to demand proof of her guilt, and Iago is made to say:

Would you, the supervisor, grossly gape on?

• • • • •

It is impossible you should see this,  
 Were they as prime as goats, as hot as monkeys,  
 As salt as wolves in pride, and fools as gross  
 As ignorance made drunk: but yet I say,  
 If imputation and strong circumstances,  
 Which lead directly to the door of truth,  
 Will give you satisfaction, you may have it.

That is all that any husband can expect—imputation and strong circumstances leading directly to the door of truth; and if he is never invested with his right to kill until he has more than that, then it is denied him altogether!

Is not the man who discovers some sign, after the admission of guilt by his wife, corroborating her statement, as much the victim of passion, as though he had surprised the adulterer in his guilt? Does it make any difference how the knowledge is gained? Is the spectacle more exciting than

the belief? It is when suspicion changes into proof, when the mind can no longer lay hold of or reason upon doubts, that the tumult of the passions commences, and while it rages, it is vain to try to assuage them.

By the law of England, it is treason to defile the queen consort or regnant, and also the heiress apparent, but not the queen dowager. The reason is, it puts a spurious heir upon the government, and the crown, in that way, might pass into illegitimate hands. We have no government here transmitted by inheritance, unless it is the government of families; but is not the diadem of the family honor as dear and costly as any that ever graced a monarch's brow? Where is the man who does not contemplate the honor of his family as it flows from father to son with the same reverence and attachment with which he would contemplate the governmental crown as it passed from the head of the incumbent to his successors! You, all of you, know the loyalty of an Englishman to his government. Allegiance was never more strong than is that of the subject there to the sovereign. And if attachment like that can grow up between individuals and the government that grinds them down, how much stronger must be the attachment that grows up between the members of the same family! Let the same sanctity that attaches to the nation's queen attach to the queen of every family altar. Shall the palace be purer or securer than the hut? Shall one's lawful children mix or commune with the living monuments of his wife's inconstancy? Shall the offspring of another man divide with one's lawful children their patrimony? Shall every door be swung open to the adulterer? As thrones and crowns do not go with us by birthright, let the ægis of the law extend itself around every family castle. Cuckold! Who would live to have it written upon his back? What man so made of flint, that he could walk in the presence of his fellow men, and feel that some person was secretly smirking or smiling at him, because he knew, if he did not know, of his wife's inconstancy? What is the choice? The choice is for the injured husband, in the midst of his agony and

despair, to lay violent hands upon his own life, and leave the course free to his wife's seducer, or to lay those violent hands on the life of him who has justly forfeited it. Remember that we were made in the image of the great Creator. Man was made erect, and to walk erect upon the face of the earth and when the immortal soul was breathed into his nostrils, he was invested with dignity of character and with instincts to protect that dignity of character; and in the same way, in which his instincts tell him that his God lives, he is told to defend his dignity, even to the extent of his own or his neighbor's life.

This brings me, if the Court please, to the last consideration in connection with this subject, which constitutes the fifth question I proposed to the Court, viz.: what was the effect of the rule which lowered or reduced such a killing to manslaughter? I design showing that it was equivalent or tantamount to an acquittal, that the rule at common law, which made such an act manslaughter, was, in effect, declaring that there was no offense, or so light an offense as not to be worthy of punishment.

At the time the common law rule was first promulgated, they had what was called the *privilegium clericale*, or privilege of clergy, on praying which, a party convicted of a felony was entitled, on a mere burning in the hand, to be discharged from the severer penalties of the conviction. And here I cite from the case of the Earl of Warwick, 13 St. Tr. 1014, 1020, the opinion of Lord Ch. J. Treby. A husband, at common law, convicted of slaying a person who had committed adultery with his wife, was entitled to claim the benefit of clergy (as it was called), and on that, and a slight burning in the hand, he was discharged from the conviction. "The benefit of clergy was an ancient privilege, whereby a clerk (that was the name by which clergymen were then known) charged with felony, was dismissed from the temporal judge and delivered in custody to his Ordinary, before whom he was to purge himself, if he could, of the offense." It was supposed that the persons of clergymen were sacred. The

privilege was originally confined to men in holy orders. That was by the old law. It was afterwards, by statute, extended "in favor to learning," to "lay clerks," or laymen, who, by reason of their ability to read, were "in a possibility of "being made" priests. You will think it strange, gentlemen of the jury, that the law thought it less sin in a man, who could read, to commit a crime, than in one who could not read; but so it was under the old English law. As soon as the party, claiming this privilege, was convicted of felony, he was subject to three things—first, the loss of his liberty, being to continue a prisoner; second, the loss of his goods and chattels, absolutely, and of his capacity of purchasing more, and "of taking and retaining the issues and "profits of his freehold land to his own use;" third, the loss of his credit, so as not to be a witness, juror, etc. When he had made his purgation, he was restored to all these things, except the goods and chattels, which he had at the time of his conviction. They were forfeited, absolutely. Purgation was the convict clearing himself, before the Ordinary, of the crime "by his own oath, and the oaths or verdict of an inquest of twelve clerks, as compurgators." The statute of 18th Elizabeth, c. vii, abolished this system of purgation, with its perjuries and abuses; and provided that after the allowance of clergy, and burning in the hand, the party should "forthwith be enlarged and delivered out of prison" by the justices before whom such clergy should be granted, unless the judges might, for the further correction of the party, detain him in prison not to exceed one year. Peers had the benefit of the law, "without either clergy or burning." Clerks in orders; "upon clergy alone, without burning." A lay-clerk "not without both." This was the punishment which could have been inflicted under the rule, at common law, which declared that the slaying of an adulterer, caught in the act by the husband, should be deemed manslaughter. The mode of obtaining the allowance of clergy was, for a party, as soon as he was convicted of a felony, to suggest to the court that he was able to read. A book was then handed to him, and if he could read the neck-verse (as

it was called), he was entitled to his clergy. The neck-verse was "a scrap of Latin," *miserere mei Deus*. (Fost. Cr. L. 306.) The "ceremony of reading" was abolished by an act in the 5th of Anne. The neck-verse is supposed by some to have been always the beginning of the 51st Psalm (12 St. Tr. 631, note); but this is certainly not so.

The question then arises, whether, if under the old law, the offense, which the killing of an adulterer caught in the act, was declared to be, was tantamount to an acquittal or exoneration from all liability—the rule can be invoked by the prosecution to procure a conviction, for the purpose of insuring the infliction of the punishment which our Act of Congress prescribes for a conviction of manslaughter?

The counsel for the prosecution may say that taking the counsel for the defense at their word, the common law rule convicts the defendant of manslaughter; but is it to be lost sight of that that manslaughter, at the common law, was scarcely punishable as an offense? If by any subsequent statute manslaughter is made a capital offense—can the counsel for the Government claim the benefit of the common law rule to get a conviction, and then fall back upon the statute for the punishment? No. This Court is to construe the common law rule with reference to the law which existed at the time it was promulged; and if the conviction of felony, at that time, involved a merely nominal punishment, and there is no punishment now which answers to that which then prevailed, it is the duty of the Court to direct the absolute acquittal of the defendant. I refer the Court to 4th Blackstone's Commentaries, page 373, and to Foster's Crown Law, page 288. The Court will perceive that these authorities show that, at the common law, the privilege of clergy made a conviction of manslaughter merely nominally punishable. Foster says:

"And if it deserveth the name of a deviation, it is far short of what is constantly practiced at an Admiralty-Sessions under the 28 H. 8, with regard to offenses not ousted of clergy by particular statutes, which had they been committed at land, would have been entitled to clergy. In these cases the jury is constantly directed to

acquit the prisoner; because the marine-law doth not allow of clergy in any case. And, therefore, in an indictment for murder on the high seas, if the fact cometh out upon evidence to be no more than manslaughter, supposing it to have been committed at land, the prisoner is constantly acquitted."

Blackstone is to the same effect. These citations establish this: that in the Maritime Courts, where the privilege of clergy was not, as such, known at all, a conviction of felony in any case, which would have been clergyable in the common law courts, was regarded as tantamount to an acquittal; or that the jury were directed in such cases to acquit absolutely. Showing precisely what I told the Court at an earlier stage of my remarks, the fact would prove to be—that when, upon these special verdicts, the courts had secured a forfeiture for the crown, they felt they had gone far enough, and that all, beyond that, was merely nominal, without reality or substance!

The fondness of the English judges to decide, themselves, the most important questions in a criminal prosecution, can be seen in the remarks of Ch. J. Raymond, in delivering judgment in *Oneby's case*, 17 St. Tr. 49. The question of malice is there denied to be a question of fact, and claimed for the Court.

The conduct of the judges in regarding too much the effect of their judgments upon the royal revenue, is very pointedly reprobated by Foster, 263 Crown Law:

"I cannot help say, that the rule of law I have been considering in this place, touching the consequence of taking or not taking due precaution (i. e., in holding blameless, or almost blameless acts to amount to manslaughter), doth not seem to be sufficiently tempered with mercy. Manslaughter was formerly a capital offense, as I shall hereafter show. And even the forfeiture of goods and chattels upon the foot of the present law, is an heavy stroke upon a man guilty, 'tis true, of an heedless, incautious conduct, but in other respects perfectly innocent. And where the rigor of the law bordereth upon injustice, mercy should, if possible, interpose in the administration. It is not the part of judges to be perpetually hunting after forfeitures when the heart is free from guilt. They are ministers appointed by the crown for the ends of public justice; and should have written on their hearts the solemn engagement his majesty is under to 'Cause Law and Justice in Mercy to be executed in all his Judgments.'"



At the present time, however, it is the province of the jury to render general verdicts. Lay intelligence pronounces upon matters of fact. Juries have a firmness, judges had not. You, gentlemen of the jury, are to pass upon all the issues joined upon this indictment. I shall not amplify this point any more. It appears that even though, at the common law, for the purpose of enriching the crown forfeitures were made for it; still, in those courts in which the privilege of clergy did not exist, offenses which were clergyable at the common law, were considered grounds of absolute acquittal, and that in analogy to the privilege of clergy, the maritime courts directed acquittals in all cases in which that privilege could be claimed at the common law.

I come now to the sixth question I proposed to discuss. How far the provocation furnished by the deceased to the defendant acted upon or affected the defendant's mind in reference to exonerating him from all legal consequences for or by reason of the killing in question; whether, while the influence of the provocation remained, it did not render the defendant for the time being insane; whether it did not operate such a state of mental unsoundness as to relieve the defendant's alleged act of and from all criminality, supposing the act to have been immediately and directly prompted or occasioned by it? In other words, whether the case is one of pardonable or excusable unsoundness of mind, or of wanton or ungovernable passion; whether the defendant, not being to blame for the provocation, the frenzy, or its results, can be holden for a crime? This point is regarded as one of the most important items in this prosecution. We mean to say, not that Mr. Sickles labored under any insanity consequent upon an established, permanent mental disease, but that the condition of his mind at the time of the commission of the act in question was such as to render him legally unaccountable, as much so, as if the state of his mind had been produced by a mental disease. In other words, the proposition we shall argue to this jury is this: it is no matter how a man becomes insane; is he insane? Whether it is a disease of the

mind or body that produces his delirium, or whether it is a provocation coming suddenly upon him, is perfectly immaterial. If his mind is in the same condition from either cause, then the privilege of exoneration, in consequence of his conduct, attaches as completely in the one case as in the other. Disease, gentlemen, is inexplicable in its visitations, and the ailments which affect the mind come upon it just as certainly and suddenly as do the ailments which strike at a man's physical structure. Bodies, apparently in full health, are suddenly stricken down. Why may not minds be as unexpectedly affected? The mind is as delicate as the body. A sudden transition from one extreme to another—as, for instance, a sudden transition from heat to cold, or cold to heat—will frequently destroy the equality of the body; and it is precisely the same with the mind. The reaction is just as strong; and when thus disturbed in its equilibrium, how disastrous the consequences become!

The state of the mind can never be gauged by definitions. In the time of Lord Hale the doctrine as to how far its state or condition excused from criminal responsibility, was built upon a very narrow foundation. In the 1st Hale's Pleas of the Crown, p. 30, he says:

"It is very difficult to define the indivisible line that divides perfect and partial insanity; but it must rest upon circumstances duly to be weighed and considered, both by the judge and jury, lest, on the one side, there should be a kind of inhumanity towards the defects of human nature, or, on the other side, too great an indulgence given to great crimes."

Although the term insanity is the same as unsoundness of mind, and considered as equivalent to it—in this case I prefer to use the latter terms. It is as difficult to define the causes that may throw the mind into a state of unsoundness, as it is to define the particular state of unsoundness into which it may thus be thrown. The jury are to carefully weigh its condition at the time of the commission of an act. You are not to be too savage on the one hand, nor too feeling upon the other. You are to avoid extremes either way. You are not

to pardon the passion which has been unduly excited by an inadequate cause; nor are you to refuse indulgence to a passion which has been provoked by an adequate one, and which, when once aroused, defies all human restraint. We deny that this case presents an instance of ungovernable passion, as those words are legally understood. An ungovernable passion implies a passion disproportionate to the provocation; one if not wantonly excited, at least, wantonly indulged—such as over-sensitiveness, severe retaliations for slight affronts, and the like.

The following instances of “inadequate provocation,” are given by Lord Holt, in “*Mawgridge’s case*” (17 St. Tr. 66-69):

“Therefore, I am of opinion that if two are in company together, and one shall give the other contumelious language (as suppose A and B), A that was so provoked draws his sword and makes a pass at B (B then having no weapon drawn) but misses him. Thereupon B draws his sword and passes at A. And there being an interchange of passes between them, A kills B, I hold this to be murder in A, for A’s pass at B was malicious, and what B did afterward was lawful. But if A, who had been so provoked, draws his sword, and then before he passes, B’s sword is drawn; or A bids him draw, and B thereupon drawing, there happen to be mutual passes; if A kills B this will be but manslaughter, because it was sudden; and A’s design was not so absolutely to destroy B, but to combat with him, whereby he run the hazard of his own life at the same time.

“Secondly, As no words are a provocation, so no affronting gestures are sufficient, though never so reproachful.

“Thirdly, If one man be trespassing upon another, breaking his hedges or the like, and the owner, or his servant, shall upon sight thereof take up an hedge stake, and knock him on the head; that will be murder because it was a violent act beyond the proportion of the provocation.

“Fourthly, If a parent or master be provoked to a degree of passion by some miscarriage of the child or servant, and the parent or master shall proceed to correct the child or servant with a moderate weapon, and shall by chance give him an unlucky stroke, so as to kill him; that is but a misadventure. But if the parent or master shall use an improper instrument in the correction, then if he kills the child or servant, it is murder.

“Fifthly, If a man upon a sudden disappointment by another shall resort violently to that other man’s house to expostulate with him, and with his sword shall endeavor to force an entrance to compel that other to perform his promise, or otherwise to comply

with his desire; and the owner shall set himself in opposition to him, and he shall pass at him, and kill the owner of the house, it is murder."

In the same opinion, the cases of manslaughter are classified as follows:

First, If one man upon angry words shall make an assault upon another, either by pulling him by the nose, or flinging upon his forehead, and he that is so assaulted shall draw his sword and immediately run the other through, that is but manslaughter; for the peace is broken by the person killed, and with an indignity to him that received the assault.

"Secondly, If a man's friend be assaulted by another, or engaged in a quarrel that comes to blows, and he, in the vindication of his friend, shall on a sudden take up a mischievous instrument and kill his friend's adversary, that is but manslaughter.

"Thirdly, If a man perceives another by force to be injuriously treated, pressed, and restrained of his liberty, though the person abused doth not complain, or call for aid or assistance; and others out of compassion shall come to his rescue, and kill any of those that shall so restrain him, that is manslaughter.

"Fourthly, When a man is taken in adultery with another man's wife, if the husband shall stab the adulterer, or knock out his brains, this is bare manslaughter."

In Chetwynd's case, 18 St. Tr. 290, is another instance of "insufficient cause" for killing. Chetwynd (a lad of about fifteen years of age) killed one Ricketts (who was about nineteen years of age), his schoolmate, for snatching away a piece of his cake against his consent. The cake was lying on a bureau, and the killing was effected by a stab given with a knife with which Chetwynd cut the cake. The jury rendered a special verdict, which the friends of Ricketts laid before Sir John Strange, who answered one of the questions propounded to him, by saying, "I am strongly inclined to think this will be adjudged murder." Before the argument of the special verdict, the relations of the prisoner, "who were persons of some figure in the world," applied to the king for a pardon. The lords justices in council referred the petition for a pardon to the attorney and solicitor general, and after their report was made, a pardon was granted. The case proves two things—that it is fortunate for a prisoner to have

relatives "of some figure" in the world—and that in England, at that time, at all events, when the application of a well settled legal rule to a particular case, was disrelished, the Crown stepped in and prevented the judges offering violence to their own feelings! This case occurred 17 George II., A. D. 1743, and shows the unreliability of the English rules; for when their rigor was not palatable, and the courts could not extricate, the king did!

In Foster's Crown Law, 290, 291, the subject of "insufficient provocation" is thus alluded to:

"Words of reproach, how grievous soever, are not a provocation sufficient to free the party killing from the guilt of murder. Nor are indecent provoking actions or gestures expressive of contempt or reproach, without an assault upon the person.

"This rule will, I conceive, govern every case where the party killing upon such provocation maketh use of a deadly weapon, or otherwise manifesteth an intention to kill, or to do some great bodily harm. But if he had given the other a box on the ear, or had struck him with a stick or other weapon not likely to kill, and had unluckily and against his intention killed, it had been but manslaughter.

"The difference between the cases is plainly this: In the former the *malitia*, the wicked vindictive disposition already mentioned, evidently appeareth; in the latter, it is as evidently wanting. The party, in the first transport of his passion, intended to chastise for a piece of insolence which few spirits can bear. In this case, the benignity of the law interposeth in favor of human frailty; in the other, its justice regardeth and punisheth the apparent malignity of the heart."

From the citations I have just made, I think you will agree with me, gentlemen of the jury, that the English law of homicide is hardly consistent, and that many of its principles would not do to carry out, under our mode of administering criminal justice. It may suit the proprieties of the bench to hold that killing an adulterer is as high a crime as killing one for fillying you upon the forehead; or that one who interferes in behalf of a friend or a stranger, and kills in the heat of passion, or on the spur of the moment, has an equal sanction and incurs no greater responsibility for his conduct than the husband who defends the honor of his family; but such rules would hardly do for an intelligent jury. We know

enough of the action of juries to know that they have, at times, reversed the common law so far as to reduce the offense of killing to manslaughter, for opprobrious words, such as would and did stir up the sensitiveness of the person to whom they were addressed. Must adultery take rank, as a provocation, with words? To confound it with the other instances given of manslaughter, is to confound extremes. If flinging upon the forehead prevents an act rising to murder, the provocation of polluting a wife justifies and shields it altogether.

The American law, in reference to homicide, aims at two things; first, the punishment of the offense when perpetrated in cold blood—*sedato animo, malitia prae-cogitata*; second, when committed revengefully, while in a state of passion, but passion unduly excited or wantonly indulged. Homicide committed while in a frenzy—a transport of rage—is not a crime, when the provocation is sufficient to justify the mental condition. The cases punished by the law imply either the possession of perfect will or the loss of it through the wantonness of the frenzy, which is deemed to be indicative of vice. In either case, the homicide is revengful. In the one case, it is cold-blooded revenge; in the other, it is passionate, hot-headed revenge. We can concede on the part of the defense that life taken in cold blood, or under the influence of excitement not proceeding upon an adequate provocation, is criminally taken. How does this affect Mr. Sickles? In murder, a party is in possession of his will; in manslaughter he is not under the control of reason. That does not touch the question in this case, as to how the provocation Mr. Sickles received operated upon him. He did not act in cold blood. If he did, he is more or less than human. His provocation was adequate, proportioned to his frenzy; for the law concedes that it was past endurance. How hypocritical, then, would it be for the law to punish him, when it starts with admitting that he was not and could not be a free, rational agent!

It is important for you, gentlemen of the jury, to know some of the facts of which he was aware at the time of his

collision with the deceased. He knew when he met Mr. Key on the afternoon in question that he was about his house for the purpose of making an assignation with his wife. He knew that he had hired a house but a few blocks from his mansion, where he met his wife. He knew that he had the aid of a park, and a club house, and an opera-glass, which enabled him to see whether or not it was safe for him to approach his habitation. This thing was well considered by Key! He hired the house in a part of the city from which he thought no witnesses could come against him; in a part of the city populated chiefly by blacks, where, from his legal knowledge, he knew that facts seen by them were not seen at all. All the weapons which, as an adulterer, he required, he had about him on the afternoon of this fatal occurrence. He wanted no Derringers to accomplish his end. And although there is no proof before you to show that he was not armed at that time, the evidence to be adduced on the part of the defense will be that he was a man who was in the habit of carrying arms. He was provided, no doubt, with all that was necessary to protect his life. At all events, he was furnished with all the means serviceable to him in the pursuit of his adulterous intentions—his white handkerchief, the signal of assignation—the adulterer's flag—and the other appliances of an adulterer's trade.

Mr. Sickles knew that Key was in the habit of carrying his opera-glass. He knew that he was in the habit of availing himself of the club house and park, and that he had been frequently seen about there for the purpose of making an assignation with his wife. He had no knowledge that he was coming there that afternoon, and he saw him without any forewarning whatever. But he knew what the purpose was that brought him there. What, then, must have been the condition of his mind? Mr. Sickles did not invite him to that vicinity. The meeting was the result of accident, and when his eyes rested upon the destroyer of his happiness, he associated him at once with the facts he knew, and went forward in the transport of his rage to the consummation of the deadly

scene. I state these facts that you may be able to appreciate the point I am discussing.

Is it possible that, under these circumstances, Mr. Sickles could have acted in cold blood? Was it possible for him to know what he did of the relations of Mr. Key and his wife, and yet look upon him, even though he saw him accidentally, and preserve his equanimity? If Mr. Sickles was excited, was it an instance of passion unduly excited? If he was in a state of white heat, was that too great a state of passion for a man to be in who saw before him the hardened, the unrelenting seducer of his wife? Mr. Key did not yield to temptation in an erring moment. It was not while any sudden fit was on him, he deflowered the wife of his friend! It was a deliberate and systematic crime from beginning to end.

Though he has passed from the scenes of the living, and though he may be entitled to be kindly remembered in other things, so far as he forms the subject-matter of this inquiry, his faults are to be exposed in their proper hues and with all their aggravations.

An important consideration as to the status of Mr. Sickles' mind, is this: Had he any hand in originating or augmenting his own passion? If he had been under the influence of liquor; if he had provoked Mr. Key, and had been provoked in return by him, the case might have stood differently. But he was as innocent of any participation in the cause of his state of mind, as is any one of the jury I have now the honor to address. The provocation originated with Mr. Key entirely. He desecrated a marriage vow. He compromised his friend, and, in a respect which touched, heavily touched, that friend's heart.

By nature, accountability is based upon the idea of rational agency. *Animus maleficia distinguit*. A certain amount of reason is requisite to make a criminal act; for intention is the soul of crime. It must either be cool, deliberate, and sedate, or it must be passionate intention; and when the mind is in a state of frenzy, admitting of no motive, as was the condition of Mr. Sickles' mind at the time of the commission of



his act, then human nature is divested of its immortal part, and comes forward in the execution of its purpose submissive to the impulses that set it on.

I beg to refer at this point to the information for the panel, in the case of Carnegie (17 St. Tr. 97) :

"And as to the law of Nature, one of the first principles seems to be, that every action must be construed and regulated from the intention of the actor. Every action whatever, except in so far as it is conjoined with the will and intention of the agent, differs in nothing from the act of an irrational creature; yea, if we may so speak, as to call the operation or impulse of an inanimate creature an action, the actions of man separated from his intention and design as a rational creature differ in nothing from the actions of brutes, or the impulses of things inanimate; and consequently that action, be it what it will, can neither be crime nor virtue; it is a mere impulse or motion, not properly subject to laws or rules. But then, indeed, when it comes to be conjoined with the intention, or which is the same thing, considered as the action of a rational agent, there it comes to be subject to laws, to be considered as criminal or virtuous; or if it appear to be accidental, so as to have depended upon no will nor deliberation of reason, then it returns to be of the nature of the act of an irrational creature, or inanimate substance, and is subjected to no penalty, nor yet capable of receiving a reward. The plain consequence of which is, that it is the *animus* alone that determines the nature of the act; and if the *animus* or intention was criminal, then, by the law of nature, the action itself amounts to a crime. On the other hand, if it be good and virtuous, the act is laudable by the law of nature, supposing even a bad consequence should follow. But, in the third place, if the action truly arise from no intention or principle governing that action, it is neither laudable nor punishable, it returns to be of the kind already mentioned, the same with the like act of an irrational creature or the impulse of an inanimate substance, moved by a cause intrinsic to itself. And the consequence of all this is, that by the primary law of nature, the intention must make the crime, and therefore if there appear no intention to commit that particular fact which happens to be complained of, it is not a crime, notwithstanding of a bad consequence; it is considered as a fatality."

In other words, this authority amounts to this: that in order to make out a crime, there must be will and intention in the mind, and that will and intention can only exist where the mind is in a perfectly undisturbed condition, or else where it is only (comparatively speaking) moderately excited by

passion. Where the mind is utterly transported by frenzy and fury, it is impossible that will and intention can exist.

Every action is governed by an intrinsic cause. It is this which decides its character, and stamps it as good or bad. Where the animating principle originates with ourselves, it may be said, properly, that the act is ours. Where Nature itself takes the control, and supersedes all volition on our part—where it drives us on, and will not permit us to go back—is the fault ours? If the impulse, the pressure, the movement, is irresistible, uncontrollable, not to be withstood—is an involuntary submission on our part a crime? If we are so constituted as that when acted upon by a given provocation, we have not the power to resist the commission of that to which the provocation impels us, does the involuntary commission of the act amount to a crime? It has been asked can the Ethiopian change his skin or can the leopard put aside his spots? Can a man change his nature? If we are so formed that the provocation of adultery with a wife is one we cannot withstand, upon what principle are we liable for consequences we were not able to avert? I deny—I spurn the idea that the mind of Mr. Sickles was in a mere state of passion. You might as well say that it was cool, undisturbed and that it preserved its equipoise. You might as well say that he was at heart a murderer, and proceeded in cold blood—as to say that at the time he met Mr. Key his mind was simply under the influence of passion. If he was a human being at all, from the moment his eyes fell upon the man who had wronged him; when he knew he was around his house to lay his train of pollution to it, he must have been transported. His will and his intention must have left him. He must have become the creature of his instincts—to which even brutes are true. He must have acted upon them, and surrendered himself, as he no doubt did, fully to them.

Our proposition comes to this—that if the provocation given by the deceased, was of the aggravated character conceded by the law; and as the consequence of it, the defendant, for the time being and while under its influence, was in

the same state of mental unsoundness, as if the result of disease would have excused his act or exonerated him from accountability—he is equally unaccountable under the circumstances of this case. The law regards the condition of the defendant's mind, and the part the deceased had in occasioning it.

And here let me inquire—was the deceased at the time of the commission of the act in question, in the peace of God and of this community? And in the language of the indictment, for that is another way of propounding the inquiry, was Mr. Sickles moved and seduced by the instigation of the devil? That is the language of the indictment; and to convict the defendant under it you have to find that Satan set him on, and that he did not act under the ennobling instincts of his nature. What an atrocious verdict that would be to declare upon the oath of a juror that when Philip Barton Key met his death he was in the peace of God and this community, when he was on a mission of adultery, and that Daniel E. Sickles, the injured, outraged husband, when he slew him under this provocation, yielding to instincts he could not resist, was tempted and set on by the devil. Yet that is the finding which the prosecution ask you to record against the defendant. This is no figurative language, for unless the devil set him on, he perpetrated no crime.

Was it the malicious or the frenzied maddened will of the defendant that caused the death of the deceased? I shall consider this: first, by taking a succinct view of what is called “mental unsoundness”; second, by suggesting the legal tests applied in such cases; third, by asking the jury to say how far the mind of Mr. Sickles must have been frenzied by the provocation he had received from the deceased, and how far its state or condition coincided with these tests, at the time of the killing.

First, let me ask you to follow me in a brief review of what is called “mental unsoundness”.

At one time, in order to make an act, committed while in a state of insanity or unsoundness of mind, excusable, where

"its matter" would, otherwise, be capital, it was necessary that the party should be totally insane, that he should be entirely bereft of mind and reason. This was the law in the time of Hale as to treason and felony. I refer the Court to 1st Hale's Pleas of the Crown, p. 30. When he wrote, in order to make unsoundness of mind an excuse in law, in such instances, it was requisite that the insanity should consist either of (what he called) "phrenesis" or "lunacy," either absolute and permanent insanity, or that which was "interpolated" and existed "by certain periods" "and vicissitudes." Lunacy was used to signify the influence of the moon on all diseases of the brain, being absolute while it lasted.

This error was first attacked by Lord Erskine on the celebrated trial of Hadfield (27 St. Tr. 1282). Hadfield was indicted for treason, in attempting the life of the king (George the Third), as he was about taking his seat in a box at the Theatre Royal, Drury Lane. Erskine was his counsel—Kenyon, a bright name in jurisprudence, then chief justice of the King's Bench, presided at the trial. Erskine, on that trial, succeeded in establishing the doctrine that an emancipation from legal accountability, also, attached to one "whose whole reasoning and corresponding conduct, though governed by the ordinary dictates of reason, proceed upon something which has no foundation or existence." In other words the doctrine of insanity from delusion—where the imagination is diseased and disordered—mistaking its own absurd creations for realities. While Erskine enlarged or extended the rule as to "mental unsoundness," as a legal excuse for human conduct, he also fell into error, in maintaining that facts awakened resentments, and that they could not be accepted in law, to make out the defense of insanity—that morbid delusions and not real circumstances, must be the impelling motive to an act, to save or shield a party from its consequences; that the mind could be frenzied, only by imagining a state of facts which if believed as imagined would be sufficient to destroy the reason.

The modern and now well-settled law of insanity was

moulded after this, and carried the rule much farther than as stated by Hale, or modified by Erskine. It was ascertained that there was not only an insanity of the intellect, but an insanity of the affections, the passions, and this latter is the particular species of "mental unsoundness" to which I now invite the attention of the Court and jury. In this connection I shall first read several extracts from Dean's Medical Jurisprudence, containing the results of the law, stated with simplicity and perspicuousness. On page 488, Mania is thus divided and defined:

"Mania has two divisions: The first embraces intellectual mania, both general and partial. The second, moral mania, both general and partial. This division or classification of the active forms of mania will fail to be clearly understood except by those who have accustomed themselves to look at the mind, in its sane state, as being made up of intellectual and moral powers and faculties, and of clearly discriminating the differences between them. The distinct office of the one, is to originate and elaborate all the diversified forms of thought; to perceive, conceive, imagine, remember, judge, associate, reason. That of the other, is to produce every modified form of feeling, to give birth to emotions, passions, desires, everything that impels, or in any degree feels.

The relations in which these two departments stand to each other, are in the highest degree interesting. The moral faculties, embracing as they do all the instincts, propensities, sentiments and affective powers, are in themselves perfectly blind, and absolutely require the aid of the intellect to enlighten, to guide and to enable them to work out their various purposes.

"On the other hand, the intellectual faculties derive all their motives to exertion from the moral department, without the promptings of which, they probably never would exert themselves except in the feeblest manner. In the moral or affective departments is lodged the immense magazine of motives that exert their ceaseless and widely-diversified influence over all the stirring activities of life."

That is, the departments of the mind are twofold: first, its intellectual department, which comprehends the ability to think, to judge, to reason; second, its affective and moral department which is the residence of the passions. Whether the insanity is of the intellect or of the passions, if the act committed is traceable to its influence, it is not an act which is the subject of visitation by the criminal law. And so, on

page 492, speaking of general intellectual mania, this author says:

"As intellectual mania arises from the perverted action of the faculties that form ideas, and moral mania from those that furnish feelings, emotions, motives and passions, we should naturally expect to find the first more characterized by the conversation, and the last by the conduct of the individual. This, accordingly, will be found to be the fact, and it affords one of the best means of discriminating between the two."

And so, on page 495, speaking of moral mania, this author says:

"Hitherto, the attention has only been directed to the exaltation and perverted action of those faculties that constitute the intellectual part of man's nature. It is perfectly obvious, however, that the affective or moral powers are equally as essential as the intellectual in constituting a complete human mind. Nor can the organs of those faculties claim an exemption from disease; nor the faculties themselves from perversion and derangement. Hence, another form of active mania, which has been termed moral mania.

"This was never recognized as a distinct form of mental alienation until the time of Pinel. He was the first to observe, about the commencement of the present century, that where there was no lesion of the understanding, no delusion or hallucination of intellect, there might exist a kind of instinctive or abstract fury, which could be referable only to the affective powers. It is now very universally admitted by the most approved writers on mental alienation. It is defined to consist in a morbid perversion of the natural feelings, affections, inclinations, temper, habits and moral dispositions, without any notable lesion of the intellect or knowing and reasoning faculties, and particularly without any maniacal hallucination—Guy's Principles of Forensic Medicine, 306. Moral mania, like intellectual, is divided into general and partial."

Moral insanity, it seems from this, has at this time a perfectly well recognized existence. It is conceded that that magazine which holds the passions, the emotions of the human heart, can be as much enthralled by madness as can the intellect itself. It is there the adulterer's provocation strikes. It may not destroy the power to think or to reason, but it displaces the ability to resist the instincts of our nature. Man is only a moral agent, as he is able to exert his will. If it is maddened so that he cannot exert or resist it, how can it be said his moral agency still exists?

And so, on pages 496 and 497, speaking of general moral mania, this author says:

"A strict inquiry must be made in relation to his former habits, disposition and modes of feeling and action. This will probably result in the discovery of one or two things. Either a marked change will be found to have occurred, which will be likely to date from the period when he sustained some reverse of fortune, or experienced the loss of some near and dear relative, or the alteration will be found to have been gradual and imperceptible, consisting in an exaltation or increase of peculiarities which were always natural or habitual. There is also another tolerably extensive class of cases in which the change has been consequent upon some shock which the bodily constitution has undergone; and this has been either a disorder affecting the head, an attack of paralysis, a fit of epilepsy, or some fever or inflammatory disorder.

"The change, however, brought about, is always found in the temper, disposition, habits and moral qualities of the individual; and is uncomplicated with any delusion or other evidence of derangement of the intellectual faculties. It is properly described by Hoffbauer as being 'a state in which the reason has lost its empire over the passions and the actions by which they are manifested, to such a degree that the individual can neither repress the former nor abstain from the latter. It does not follow that he may not be in possession of his senses, and even his usual intelligence; since, in order to resist the impulses of the passions, it is not sufficient that the reason should impart its counsels, we must have the necessary power to obey them. The maniac may judge correctly of his actions, without being in a condition to repress his passions, and to abstain from the acts of violence to which they impel him.'"

The mind is not perfect for the purposes of human accountability, unless it is possessed of the reason which informs and of the ability which enables an individual to obey the will. If it is in that condition in which the reason or the will is dislodged, then one of its departments is completely gone, and that state of mental unsoundness is superinduced which, whether it be the result of disease or provocation, equally excuses from criminal responsibility.

And so, on page 500, speaking of partial moral mania, this author says:

"Partial moral mania consists in the deranged or perverted action of one or a few of the affective or moral powers and faculties. The effect of it is to place the individual under the dominion of some one vice, or ruling idea, which exercises a sway, perfectly ty-

rannical, over the entire man and his actions. Every moral power or faculty is liable to be perverted or deranged in its manifestations; but those which are the most prominent, and the most frequently exhibited in the affairs and conduct of life, are the most liable to deranged action."

If, without moral liberty, there can be no accountability for crime, what moral liberty is there on the part of a husband when he comes to deal with the adulterer of his wife? How can it be said that at a juncture like that, when he is confronted with the man who has blasted his hopes and his prospects, and brought disgrace on his household, he enjoys enough of free agency to be subject to responsibility for crime?

The mysteriousness of the insane impulses which the human mind is capable of entertaining, can be discerned in that species of moral mania known as homicidal, which is thus spoken of by this author, on page 510:

"This, at the present day, is a subject of immense interest throughout the civilized world. Here, in a most peculiar manner, and with most appalling results, is shown the amazing strength of insane impulse; which, by a power and energy resistless as the fiat of God, impels the wretched being to destroy life, without a motive to actuate, or an end to be attained, or object to be accomplished. Individuals in the full possession of their usual powers of intellect, whose social and moral organization, to all appearance, remain unaffected, have imbrued their hands in the blood of the innocent, frequently in that of their own wives and children, simply because they felt that they must destroy."

And so, on pages 574, 575 and 576, speaking of the legal consequences of moral mania, this author says:

"Irresponsibility in moral mania rests on a different principle from that of intellectual. There is here no delusion, no false assumption of fancies for facts. The intellectual faculties may remain undisturbed in their operations, while the moral are exhibiting every variety of derangement. This, it is true, seldom occurs; as extensive derangement of the moral powers is commonly accompanied with some perversion of those of the intellect. Nevertheless, as the one set of faculties is independent of the other, there exists the possibility of their separate derangement.

"As the moral powers embrace the motives, impulses, and promptings to action, the derangement of one or more of them must seriously affect the volition upon which the act depends.



"Actions are volitions carried to their extremest limits. They take place when nothing is wanting to render the volition complete, and they are themselves its most perfect evidence. Without the proof they furnish, there is no accountability to human law; as man can be accountable to God only for the volitions he forms in his own mind, but leaves unexecuted. The principle of forming volitions, and of carrying them out into acts, must be fully possessed to render a being accountable. When therefore the first is necessarily rendered incomplete, or the last prevented by some insurmountable obstacle, all accountability is destroyed. It is in the first only that we witness the agency of moral mania. It is a disturbing element thrown into the very sources whence volitions are derived; and either contributes, in a large measure, to the formation of those that would otherwise remain unformed, or prevents the formation of others that would otherwise be formed. In either way, it disturbs the ordinary normal-operations of mind, and thus absolves it from accountability.

"It is not easy to define in what respect this new element modifies the volition or the act. The inquiry in relation to the former, is unnecessary, except so far as it qualifies the latter. In regard to the manner or respect in which it modifies or affects the latter, so as to absolve from its consequences there can never be expected an entire agreement among writers or thinkers, or even the decisions of judicial tribunals.

"I have supposed we might find in irresistibility a principle upon which all might agree. That whenever this quality should be found attached to an act, so far as to control it, the actor, in respect to such act, should be deemed irresponsible.

"Without moral liberty there can be no responsibility for crime. In the normal, sane state of the faculties, this enters as an essential element. In the deranged state of the moral faculties, where the sources of impulse, motive and feeling are perverted and deranged, this liberty is destroyed, and with it the accountability for actions.

"Irresistibility, where it arises from deranged or perverted actions, should absolve from all accountability, because—

"1. The act is unavoidable, and the actor, therefore, no more a subject of punishment, than a machine for going wrong when some part of its machinery is out of order. To administer punishment under such circumstances, would shock all the moral sympathies of men.

"2. One of the purposes of punishment could never be answered by it, viz., the reformation of the criminal. If the act be irresistible, the whole effect of punishment upon the individual must be lost.

"3. Another of the purposes of punishment would remain equally unanswered, viz., the salutary effect to be produced by it upon the minds of others. That effect, instead of being salutary, would be in a high degree injurious, as it would shock all moral sensibilities,

and create a horror of the law itself, which could thus needlessly sacrifice life without answering any good end or purpose."

I have thus, gentlemen of the jury, endeavored to show from this book that where the mind is affected in that department, which contains the passions and emotions—where free agency is taken away—where the right of volition is denied to, or withdrawn from us, by the frenzy into which we are thrown—an act which we commit while so circumstanced, does not subject us to the visitation of the criminal law.

*April 11.*

*Mr. Graham.* I am fast approaching, gentlemen of the jury, the close of my present duty. If there were nothing else to warn me to a speedy termination of it, it would be my own exhaustion—for the severe labor, through which I passed on the first day of my address to you, has left me hardly able to perform what now remains. I feel, also, that I have already taxed too grievously the attention of the Court, and too heavily your patience, and I can only offer for it the apology of the deep interest I take in the welfare of my client.

Before proceeding with what remains of my address, permit me to rehearse to you some of the grounds I had advanced up to the hour of adjournment on Saturday. In the first place, I had submitted to you, that human laws did not reach the case of every wrong done to us. In the second place, that as to those wrongs entering into, or affecting radically and deeply the security or defense of ourselves and our natural rights, Society, by its omission to provide against them, either meant to turn us over to our instincts, as regulated by the law of nature, or else by reason of its failure in that respect, we were entitled, in all proper cases, to stand upon the great law of nature. In the third place, that as to certain relations—as, for instance, those of husband and wife, and parent and child—Nature has created duties of protection, which it was not only not criminal to discharge, but which we were bound to discharge. I had then passed to another subject, and in connection with it, had suggested;

first, that an invitation to a man's friend or neighbor, to partake of the hospitalities of his house, was upon the implied understanding, that all lust or uncleanness in reference to his wife or daughter would be repressed, or banished from his bosom; and that to come, in the guise of a friend, when at heart a foe, constituted an abuse of the license to enter; and that the offending party was in reality a trespasser; secondly, that whether the wife consented away her chastity or not, as between the husband and the adulterer or ravisher, the rights of the husband were the same; that, morally speaking, the wife was the property of the husband, and, as against him, possessed no dominion over her person in favor of another. I had then passed to the consideration of another subject, and in connection with it, had exhibited the offense of adultery in two aspects; first, as its heinousness was impressed upon it by the Bible; secondly, as it was presented at the common law. In reference to the Bible, I had argued that, in making adultery so high a crime, it was fair to presume our minds were formed with corresponding perceptions; that is, I had submitted to you that when the Almighty portrayed adultery as so heinous an offense, he supplied us with that capacity of mind which enabled us to look upon it in the same heinous light in which He himself had exhibited it. As I understand the law of Reason, it is this; that the Power, which creates a natural duty, gives us the ability to understand and appreciate it. I had, in reference to the common law, shown that the sternest judges regarded adultery as a provocation too great for human nature to bear. As to the amount of excitement which resides in that provocation, it is not necessary for you to speculate, because it has been conceded by the flintiest-hearted judges that ever presided over the administration of criminal justice, that jealousy is the highest rage of man, and adultery the greatest provocation that can be given to him. I had, in the same connection, also considered the rule making the slaying by the husband of his wife's adulterer manslaughter at the common law. I had shown that that was a merely nominal, because a clergyable

offense, involving a slight burning in the hand. I had traced the origin of the rule, and shown that the augmentation of the "*census regalis*," or royal revenue was its principal object—that it was established in the time of special verdicts, when juries did not pass upon or dispose of the question of intention, and that in the maritime courts, where the *privilegium clericale* did not prevail, in analogy to it, juries were instructed absolutely to acquit in those cases in which the privilege obtained in the common law courts.

I had left off in the consideration of one of the gravest questions arising in this case, the question as to whether there could be any criminality, when the mind was in a condition which exercised from it all will or intention. We understand the basis of all accountability, divine and human, to be the possession of that amount of reason which enables us to know the right way, and of that amount of will which enables us to select it; in other words, in the language of the criminal law, "intention is the essence—the soul of criminality." In the case of every crime, there is a body and an animating principle, precisely as in nature. Every crime is divided into two parts; first, the *corpus delicti*, as it is called—that is the body of the offense—and it is a mere dead, inanimate body, without that exciting principle which gives it life; secondly, the intention, or will, which enters into it. It has its palpable and impalpable feature—its overt act—and its requisite amount of legal malice. It is just as possible to separate the soul from the human body, and still preserve the vitality of the human body, as it is to separate the animating principle of crime, the will or intention, from the *corpus delicti*, or body of the offense, and, at the same time, insist upon criminal responsibility with reference to the mere commission of the overt act.

Although, in the present case, a human being was slain, nevertheless, we say the soul of that act, that which could turn it into a crime (if it could become a crime at all), was never infused into it; that there was not that will or intention on the part of the slayer, at the time of the perpetration

of his act, which rendered him amenable to a criminal tribunal. The proposition I had submitted on this point was this: that whether the state of mind was produced by disease, or provocation, was perfectly immaterial; the inquiry for the jury was, what was the state of mind, and I submit to you that that is a proposition founded in sound reasoning. Is it material how a result is accomplished, so long as it is accomplished? There is one exception to this rule, and that is—where a man takes into his mouth, voluntarily, that which steals away his brains, the law says that he is responsible for every act committed under its influence; for its maxim is: "*Nam omne crimen ebrietas, et incendit, et detegit*;" drunkenness both inflames and discovers the crime committed under its influence. In this case, however, there is no such thing, for Mr. Sickles was not a party to the origin of the provocation, which acted upon him and induced him to the commission of his act. There might be something in favor of the prosecution, if that ground could be occupied by it, but he stood entirely clear of the conduct of this adulterer, was in no way privy to it, had never connived at it, and the first knowledge he gained of it, was the moving cause to the commission of the act for which he is now arraigned before you.

I had shown you, gentlemen of the jury, the construction, or tendency of the human mind, with reference to mental unsoundness. I had told you that it was divided into two departments: one, the intellectual, where the thoughts resided; and the other, the affective or moral department, where the passions resided. I had shown you that insanity might either take entire possession of the mind, that it might enthrall both its intellectual and affective departments; or that it might enthrall either of them, or involve a part of either of them; and that whenever mental unsoundness was set up, the inquiry for the jury was not whether the act was prompted by a mind generally unsound, but whether the particular influence which begat or produced the act alleged to be criminal, was such a one, as with reference to that particular act, did beget or produce mental unsoundness. It is perfectly

immaterial, as the learned judge will tell you, whether the mind was totally insane or not; if it was unsound enough to cover the particular act, which was the offspring of that unsoundness, the law declares that no accountability shall attach to a party for its commission.

I had prepared an elaborate brief in this connection; but since the adjournment of the court, I have discovered that this subject has been considered in this Court, at least, to the same depth of research to which, in the hands of the counsel for the defense in this case, it has been subjected; that it has been before the mind of the learned judge upon the bench, and that he has collected all the legal authorities bearing upon the subject, and advancing the true principles, by which this part of your duty in this case is to be regulated and controlled. Before leaving the first division of this subject, as I had proposed to consider it, namely: taking a succinct view of what is called mental unsoundness, I beg to refer the Court to the Bennett and Heard's Criminal Cases, 101, 102, 103, 104, in a very learned note to the case of *The Commonwealth v. Rogers*. The subject of "irresistible impulse" is there very cogently discussed, and the existence of "Moral Mania"—the insanity of the passions is enforced by strong original views, and strong citations. Some judges refuse to subscribe to such a species of mental unsoundness; but this Court has committed itself to its recognition in cases already tried before it. I wish to add further, that drunkenness excuses an act, where the drunkenness results from the contrivance of one's enemies. Hale's *Pleas of the Crown*, 1-32. This proves the great difference, for the purposes of accountability, between a state of mind produced by one's own act, and that brought about by the act of another, and this latter category embraces the case of the present defendant.

As to the second division of this subject, as I had prepared to consider it—namely, the tests applied by the law, in cases of alleged criminality, where mental unsoundness is interposed as a defense. I mean now to rely upon the law which the learned judge upon the bench has himself promulgated.

The cases I did intend to discuss, under this branch of the subject are Arnold's case, 16 St. Tr. 695; Earl Ferrers', 19 *Id.* 886; Hatfield's case, 27 *Id.* 1281; Oxford, 9 C. & P. 525; McNaughton, 10 Cl. & Finn, 200; Rogers, 1 B. & H. Crim. Cas. 87.

Your Honor will permit me to refer to your legal instructions to the jury, in the case of the United States v. John Day. The legal views there held are precisely those arrived at by the counsel for the defense in the performance of this part of their duty. Day was charged with slaying his wife. The defense of insanity was set up, and the cause of that insanity was alleged to be the shame or mortification occasioned to the husband, by the birth of a child (whose father was one S.), some three months after the solemnization of the marriage union. It was insisted that the shame to which this fact subjected him in the eyes and consideration of his fellowmen, so worked upon his mind as to craze or frenzy him, and that it was under the operation of frenzy, so produced, he perpetrated the act for which he was arraigned at the bar of this court. The instructions which his Honor upon the bench imparted to the jury in that case will illustrate to you, gentlemen of the jury, the idea entertained by the defense in this case, in reference to the principle now advanced to you. The first prayer of the prisoner's counsel, which was granted by the Court, was this:

"1st. If from the whole evidence aforesaid, the jury shall find that the deceased, Catherine Day, was killed by the prisoner, at the time and in the manner set out in the indictment, yet, if they shall further find that, at the time of the killing her as aforesaid, the reason and mental powers of the prisoner were so deficient that he had no will, no conscience or controlling mental power: Or if, at the time aforesaid, through the overwhelming violence of mental disease, his intellectual power was for the time obliterated; then, in either of such cases, he is not in law guilty of murder.

"Or if, from the evidence aforesaid, the jury shall further find that the prisoner was for a long time before, and at the time of the killing of his wife as aforesaid, laboring under mental disease attended with delusion, and that, in a paroxysm or outbreak of this disease of the mind, his reason and judgment were for a time overwhelmed and suspended, and, while they were thus overwhelmed

and suspended, he committed the act with which he is now charged, he is not in law guilty of murder.

"Or, and in other words, if from the evidence aforesaid, the jury shall find the prisoner committed the act, but at the time of committing the act he was under the influence of diseased mind, and was really unconscious that he was committing a crime, he is not in law guilty of murder."

The third prayer of the prisoner's (Day's) counsel, which was also granted by the Court, was this:

"If, from the whole evidence aforesaid, the jury shall find that the deceased was married to the prisoner on the 4th of June, 1850, and on the 18th of September, 1850, gave birth to a full-grown, living child, and thereupon and thereafter the mind of the prisoner was, became and continued diseased, and he falsely conceived that in consequence of the said birth he had lost character among his former associates and friends, and was no longer held in esteem among them; that such conception was an unwarranted and unsound delusion which affected his intercourse with society, and that such delusion increased in intensity until his mind became diseased thereby, and he thereafter was subject to great, causeless and violent paroxysms of rage produced by such diseased state of his mind; and if they shall further find that in such paroxysm of causeless rage his power of distinguishing whether he was committing a crime or not, was by such paroxysm, for the time destroyed or superseded, he committed the act with which he stands charged, then he is not, in law, guilty of murder."

Shame, gentlemen of the jury, was one of the emotions which crowded Mr. Sickles' mind, and but one; for the human mind may well be likened to the cave which, in ancient mythology, was said to contain the winds. It is a most fearful depository of passions, and when they rise and engage in angry, though bloodless conflict with one another, each striving for the ascendancy, it is for you to conceive, it is not for language to paint to you, the condition of the human bosom at that moment. In the case of Day, the learned judge instructed the jury, that if shame, which was only one of the emotions crowding Mr. Sickles' mind at the time of his act, was sufficient to produce a state of frenzy, which, while it was on, rendered the party who acted under its influence a mere machine in going forward to the consummation of the event before him—then it exonerated that party from all



criminal responsibility. That is precisely the law we seek to enforce upon you, after a thorough and analytical examination of the legal authorities bearing upon the point. The jury, on the first trial of Day, disagreed, and his Honor, on the second trial, repeated the instructions given to the first jury, and the defendant was found guilty of manslaughter. The mortification of having a child born prematurely after marriage, is not to be compared for a single instant to having a wife deflowered. Hence a jury might very well say, that though the former excused the shedder of human blood from a capital conviction, it did not discharge him from all accountability. But when the law of God writes, on the heart of man, what it does in relation to adultery, and the sternest judges concede that human nature cannot be expected to withstand a provocation like that, there is a vast difference between an act attributable to such a cause, and one alleged to proceed entirely from mere emotions of shame or mortification. On the second trial of Day, the learned judge granted this additional prayer for instructions of the prisoner's counsel, namely:

"And if from the whole evidence aforesaid, the jury shall find that from any predisposing cause the prisoner's mind was impaired and there was a prolonged change in his character consequent upon the birth of the child on the 18th of September (if they shall find such birth), and he became sad, gloomy and unsocial and without interest in things which he was formerly interested in; and under the influence of said causes, he became mentally incapable of governing himself in reference to his wife, and at the time of his committing said act was, by reason of said causes, unconscious that he was committing a crime as to her, he is not, in law, guilty of murder."

I refer also to the case of Jarboe, tried in this court. These cases are undoubted law, as can be demonstrated by the highest legal authorities. Jarboe was charged with murder in slaying the seducer of his sister. The deceased had entered into a promise of marriage with the sister, had violated that promise, and nevertheless had polluted her person, and left her in that condition in which she should have been only after marriage. This brother, infuriated by the conduct of

the deceased, after first asking him what he intended to do, and not getting a satisfactory answer from him, slew him upon the spot.

In that case, the District Attorney prayed for the following instruction to the jury, which was granted:

"If the jury believe from the evidence, that the deceased had been engaged to the sister of the prisoner, and if they also believe from the evidence, that the deceased had criminal intercourse with the prisoner's said sister and had refused to marry her, and that under these circumstances the prisoner asked of the deceased if he would marry his said sister, and the deceased replied "No," or that "he would see," or words to that effect, and that influenced by this provocation he took the life of the deceased, such provocation does not justify the act, and such killing is murder, if the jury are satisfied, from all the evidence in the case, that the evidence sustains the indictment."

"Mr. Carlyle, for the defendant, objected to the instructions so asked for, and argued that the prayer set forth only a part of the evidence and excluded all consideration of the condition of the prisoner's mind and of the testimony in reference to the deceased having been armed when he lost his life. Mr. Key contra.

"By the Court: "The prayer as it is presented is granted, except the words at the close—"if the jury are satisfied from all the evidence in the case that the evidence sustains the indictment."

"These words ask the Court to say that there ought to be a conviction on the whole evidence.

"They were not so intended, I am sure, but they are, as it appears to me, open to this construction and so construed would take from the jury the decision of the facts, which I never have done and never will do. All the Court says is, that the statement of facts makes a case of murder, whether these facts are proved or not, and if proved, what additional facts are also established; what was the state of the prisoner's mind as to capacity to decide upon the criminality of the particular act in question (the homicide) at the moment it occurred and what was the condition of the parties respectively as to being armed or not at the same moment, are open questions for the jury as are any other questions that may arise upon consideration of the evidence, the whole of which is to be taken into view by the jury."

Under this instruction, the jury lingered in the box but the short period of fifteen minutes, when they rendered a verdict in favor of the brother; holding that acting on the provocation he had received, and under the excitement into which it had plunged him, he stood excused before this tribunal from the act charged upon him as a crime.

The citations from Day's and Jarboe's cases are made from a pamphlet containing a copy of the reports of those cases, as preserved, in his own handwriting, by the learned and indefatigable judge himself. Particularly in the latter case, you see, gentlemen of the jury, with what explicitness and fairness your province is marked out and guarded by the learned judge. He leaves the evidence to the jury. He is unwilling to say anything which could be tortured into an expression of opinion upon it; he tells them that they are to pass upon it, to draw their own inferences from it; and, as though it was the favorite feature of his instructions, he leaves to them the state or condition of the mind of the party charged, telling them to say whether or not it comes up to the standards he lays down. This heightens your duty, for whatever moral or immoral results may flow from this proceeding, they will be traced to the verdict you may pronounce!

Gentlemen of the jury, I ask you this: if the brother who voluntarily assumes to redress the wrongs of his sister, to the extent of killing, when the father of that sister, her divine, her human protector is in being, for where the parent exists, no peremptory duty is cast upon the brother to defend the sister, unless where violence is inflicted upon her in his presence (or in similar cases), and the same duty is cast upon the stranger who witnesses its infliction; if the brother who does that, stands excused by the verdict of a jury from the consequences of his act, because the provocation was too much for him, upon what principle can a difference be indulged or a distinction drawn as to a husband intervening to avenge an outrage upon his marriage relations? These are all the authorities to which it is necessary for me in the hearing of the Court to ask your attention upon this branch of the point I am engaged in considering.

As to the third division of this subject—how far the mind of the defendant coincided with the established legal tests of mental unsoundness, at the time of the killing in question—I shall occupy your attention but a few moments upon it.

You can answer this as men—as husbands—as fathers—as brothers. We need no books here to tell you with what affections the human mind is endowed. It is a matter for your own common sense. Your own innate feelings will serve you better, in reference to this, than the citation of authorities, or any enlightenment of mine. You are qualified to respond to the question, as to what must have been the frenzy of Mr. Sickles, when he encountered the deceased under the circumstances leading to his death. There was no deliberation in the meeting. It was purely accidental. If he had thrown out a bait—if he had invited the deceased to that vicinity, in order that he might go forth from his mansion, armed, in the fearful manner painted by the learned counsel for the Government, and slay him, there would be a feature in this case which might appall us. There is no such feature here. Mr. Key was in the neighborhood of Mr. Sickles' mansion, following the bent of his own infamous and wicked inclinations. The very ferocity of the attack upon the deceased, as testified to on the part of the prosecution—the murderous character which they have tried to impart to it—proves conclusively the state of mind which actuated and prompted the defendant to his act. This is a speaking fact. He encountered the deceased without any expectation of doing so. He met him as casually, as though he had met the veriest stranger; and the ferociousness with which the witnesses for the prosecution represent him as assailing the deceased, is indicative of the impulses—the irresistible impulses, which drove him on, and to which it was impossible to oppose any resistance.

Reflect, again, for a moment, upon the fearful tenantry of the human breast. The emotions are there. The passions have their abode there. Shame, anger and grief claim it as their residence. How must they have been excited in this defendant, over the provocation they received? Could reason exert any sway over them? Amid such a tumult what voice could be heard? To what tones could the ear of the mind incline itself? Where was the free agency of the defendant,

then? Where was his will? Where, his intention? Who will call such a condition passion? It is an exaggeration of the feeling—a misuse of the term!

If individuals can be thrown back upon their instincts, this is that case. The defendant was led on, involuntarily, unwittingly, by Nature. She accomplished the result—the crusade is against her. When the community punish adultery, let it forbid private justice, and not before. Till then, the guardianship of the family altar is committed to those who preside over it. They have an adequate sanction for its defense.

I now come to the seventh question proposed by me, for consideration, which was—whether, viewing the case as one of ungovernable passion, as one of resentment produced by passion, there had been a sufficient time for the defendant's passion to cool, and for reason to get the better of him before the mortal wound was given to the deceased.

Upon this point (which could be material only, to reduce the conviction from a capital conviction, when we deny that the defendant is liable at all), I refer the Court, particularly, to *Oneby's case*, 17 St. Tr. 50; *Hayward*, 6 C. & P. 157; *Fisher*, 8 C. & P. 182; *Kelly*, 2 C. & K. 814. These were cases in which either premeditation was perfectly plain or in which reason was either not dethroned, or had time to resume her sway. The English law of cooling time was made upon special verdicts. It became a question of law upon facts specially found. Here, the jury renders general verdicts—passing upon all the facts—and applying the legal instructions of the Court to them.

In the present case there could be no cooling time. There was none, and there could be none within the compass of a lifetime. As often as recollection recalled the wrongs of his wife, the defendant's excitement would blaze up in all its original fury.

*Oneby's case* contains some very just views on the subject of slaying in hot blood. A killing, according to it, which is caused by a party in a state of passion, depriving him of his

reasoning faculties, amounts to manslaughter. If caused after reason has resumed its throne, it is murder. Where a cessation of passion is insisted upon, it must appear, either from the length of time that has elapsed from the provocation, or from the party falling into other discourse, diversion or occupation, that such is the fact. I ask the attention of the Court and jury to the following extracts from Lord Raymond's opinion, 17 St. Tr. 50:

"But then it is objected, that the law has fixed no time in which the passion must be supposed to be cooled. It is very true it has not, nor could it because passions in some persons are stronger and their judgments weaker than in others; and by consequence it will require a longer time in some for the reason to get the better of their passions than in others; but that must depend upon the facts, which show whether the person has deliberated or not, for acts of deliberation will make it appear whether that violent transport of passion was cooled or no."

Again:

"At the meeting of all the judges before Lord Morley's trial by the peers, for the murder of one Hastings, they all agreed that, if upon words two men to grow to anger, and afterward they suppress that anger, and then fall into other discourse, or have other diversions, for such a reasonable space of time as in reasonable intention their heat might be cooled, and sometimes after they draw upon one another, and fight, and one of them is killed, this is murder; because being attended with such circumstances, it is reasonably supposed to be a deliberate act, and a premeditated revenge upon the first quarrel. But the circumstances of such an act being matter of fact, the jury are judges of them."

Again:

"From these cases it appears that though the law of England is so far peculiarly favorable (I use the word peculiarly because I know of no other law that makes such a distinction between murder and manslaughter) as to permit the excess of anger and passion (which a man ought to keep under and govern) in some instances to extenuate the greatest of private injuries, as the taking away a man's life is; yet in those cases it must be such a passion, as for the time deprives him of his reasoning faculties; for if it appears that reason has resumed its office, if it appears he reflects, deliberates and considers before he gives the fatal stroke, which cannot be as long as the passion continues, the law will no longer, under that pretext of passion exempt him from the punishment, which from the

greatness of the injury and heinousness of the crime he justly deserves, so as to lessen it from murder to manslaughter.

Oney's case may have been correctly decided by the Court upon the facts specially found by the jury; but it is a matter of some doubt whether a jury would have convicted of murder, if they had pronounced a general verdict. He and the deceased (Gower) were in a room at a tavern, and had a dispute, beginning in opprobrious epithets, and leading on to throwing missiles at another, and then the seizing of swords. Gower had actually drawn his sword. Friends interfered; they were restrained, and sat down together again. After an hour, Gower wanted a reconciliation, and tendered it. Oney declined, and evinced such a manner as a man who had been drinking would be likely to exhibit. Afterward, their friends went out, and they remained in the room together, when a clashing of swords was heard. Gower was mortally stabbed, and acknowledged that it had been done in a manner fair among swordsmen. Oney was stabbed in three places, but not mortally. The Court held this to be a case of murder. Supposing it to have been right, what it said in relation to "cooling time" would have prevented this defendant from being convicted of any higher offense than manslaughter, assuming him to have been in a state of passion at the time of his act. He had not, from the discovery of his wife's guilt, or from seeing the adulterer's flag floating outside of his mansion, fallen into any other discourse or diversion, or engaged in any occupation that could break or interfere with the current of his reflections. I discuss the present point rather to make my argument complete, then because I believe that the tests, by which the mitigating effects of hot blood are judged or applied, can, in any aspect of it, become the hinge of the present case.

The time I have already occupied would forbid the examination of all the authorities I have just cited. To one more—the case of *Regina v. Fisher*—I feel impelled to refer. It was the case of a father who had slain another for committing a crime of sodomy with his son, a boy some 14 years of

age—a crime so horrible as that the law says of it, "*inter Christianos non nominandum*," not to be named among Christians. The boy had yielded to the unhallowed lust of a man, and the father hearing of the crime, pursued the man for a whole night with a menace, and having found him, deliberately slew him. Would any jury say that any such sensitive feelings could rouse the father of this boy, as would attach themselves to a wife. It is human nature to love a woman with a tenderness which does not identify itself with any other passion. It is the most enthusiastic, most maddening passion, which environs her, and invests her with her claim to protection. The more her inconstancy is contemplated, the more it crazes.

Although the father deliberately slew the man who perpetrated the horrible crime upon his son, and although the judge charged the jury in effect that they must convict him of murder, yet the jury only convicted him of the crime of manslaughter. A parallel may be attempted to be drawn between that case and the present. They do not admit of it. There, the father, after spending the night in pursuing the offender, executed vengeance upon him. In this case, the deceased thrust himself against the defendant. He had just been waving his adulterous flag. He had scarcely furled it. He was haunting the defendant's mansion. In a moment the train exploded, and because the wronged husband summarily slew the adulterer, he is arraigned here as a criminal.

Mr. Sickles, unlike the father referred to, had no time, between the provocation and its effect, to manifest the usual indications of a frenzied mind. He had no time to call in witnesses to see the distraction under which he labored. He had no time to think—to reflect upon the enormity of the exciting cause. The proof of the adulterous intercourse with his wife, and the death of the adulterer, were almost produced in the same moment; and you, gentlemen of the jury, are left to conjecture the dreadful surge of feeling that preceded the event.

As one of his counsel, I maintain that the act of the de-



fendant was committed while in a state of mind such as the circumstances would naturally, necessarily engender, and the humanity of every man can understand the meaning and force of the remark!

Begging you, gentlemen of the jury, to keep in view these considerations, namely: that the defendant was in no way connected with, or responsible for, the conduct of the deceased; that he neither countenanced nor promoted it; that it was a direct invasion of his most sacred rights; that it involved, not merely the overthrow of his household, but the destruction of his own self composure and happiness; and that he executed judgment upon the deceased while almost in the act of flaunting the adulterer's signal, I shall proceed to give you a brief narrative of the facts of this case, and then commit it to you, so far as my present duty is concerned. Who, let me ask, were the parties to this transaction? As I have said before, I shall speak no unkind word of Mr. Key. I shall place the facts before you, and leave them to speak to you. He was a man of mature years. He was a man about forty years of age, as I am informed. He had been a married man; and at the very time of his misconduct, he had the monuments of that sacred relation before him daily to warn him of the wickedness of his course. He himself had assumed the marriage vow, and knew the solemnity of it. He could tell himself what would have been his own feelings, if his own home had been dishonored; and he could very well have conceived how he would have acted, if he had discovered the author of that dishonor. He could appreciate the horror of a wife's disgrace!

His profession was such as should have imparted some gravity to his character. There are some occupations which do not interfere with the frivolity of human nature; but if there is any profession in the world, short of the pulpit, which ought to communicate gravity to the human mind, it is the profession to which I belong. The very business of our profession is to study out the rights of other men, and to observe them; and therefore a lawyer, above all others, be-

fore every tribunal, whether it be erected in the arch of the heavens above, or upon the face of the earth, is entitled to the least charitable consideration, for such misdeeds as are wanton encroachments upon what belongs to his neighbor.

What, too, was his position? He was the prosecuting officer for this District. He was selected to conserve the cause of public morality and public decency. It was his business to see that your homes were protected against seducers and adulterers, and every other species of criminals. Yet he robed himself in the garb of hypocrisy, came into this court, and hunted down, with almost unparalleled success, the very worms that crawl upon the face of the earth, while full-grown men in crime, such as he himself was, were permitted to stalk about this community, not only unpunished, but not even admonished or reproved.

That was the character of this adulterer. Who was the woman with whom he committed the adultery? Young enough to have been his daughter. What her disposition may have been, I know not; but it is not too much to say that the frivolity which surrounds women of her age, environed her; that she was susceptible of flattery; that she was susceptible to the attentions of men, and looked upon them as so many offerings cast upon the shrine of her beauty. At her period of life the marriage vow had not impressed itself upon her mind with all its gravity. She did not comprehend fully the meaning of the terms by which she had surrendered herself, body and soul, to the ownership and control of her husband.

If there ever was a case in which a man, though tempted by a woman, should have imitated the example of Joseph, who left his garment in the hands of Potiphar's wife, this was one, above all others, in which the man, rising above the dominion of his passion, should have left behind him some proof which, by the mendacity of the woman, could have been perverted into evidence of his guilt.

Who was the husband in this case? He was a man, as I understand, some years younger than Mr. Key. He was ac-

credited to your city as a member of the councils of the nation. He came here from the great commercial metropolis of the continent—a city upon which every part of this Union looks with pride, and which, however objectionable some of its features may be, nevertheless will be conceded by every American heart to be the first city of our Union. He was here in the way of duty, and by way of showing Mr. Key, and you, his confidence in the protection which was guaranteed to him by the laws of the District, he brought within its precincts his wife and child. He threw them, with himself, upon your laws for protection.

What were the relations of Mr. Key and Mr. Sickles? We shall show you what they were. So far as Mr. Sickles was concerned, they were those of sincere friendship; so far as Mr. Key was concerned, they were those of professed or avowed friendship. It has been said by the Psalmist:

"For it was not an enemy that reproached me; then I could have borne it; neither was it he that hated me that did magnify himself against me; then would I have hid myself from him.

"But it was thou, a man mine equal, my guide, my acquaintance.

"We took sweet counsel together, and walked unto the house of God in company."

The wrong of the stranger may be borne with patience, but the perfidy of a friend becomes intolerable. You will be shown, gentlemen, that Mr. Sickles had interceded to have Mr. Key appointed to the very place which his private life disgraced; that all the influence he could wield, to secure for him the elevated position of prosecutor at the bar of this Court, was thrown into the scale for the purpose of enabling him to attain the object of his ambition. We will show you that Mr. Sickles had sent him private clients, and that on one occasion, when he was obliged, in consequence of a difficulty relative to the hiring of a house, to employ professional services, he retained Mr. Key as his counsel in opposition to the senior counsel for this prosecution (Mr. Carlisle); so that there were not only friendly, but professional relations between them, which it ought to sink any man to the lowest depths of disgrace to think of compromising.

Mr. Key pretended that he was in bad health. I say pretended, because, although he had not strength enough to encounter the sphere of duty which was assigned to him here, nevertheless, he had strength enough to carry out his designs in reference to the wife of his neighbor. Had he extended to this Court the same energy which he exerted in the prosecution of his adultery, he would have been physically as he was mentally, adequate to discharge every duty which devolved upon him.

He becomes a visitor at the house of Mr. Sickles. Their acquaintance, I believe, extends back some six years. Mr. Sickles is a man in public life. He is compelled to trust to the purity of his wife. He is compelled, sometimes for considerable periods, to be away from his family mansion, and to leave his wife under the guardianship of her own chastity. Mr. Key goes there in the character of a friend, and exhibits those attentions which gallantry is ordinarily supposed to prompt, and in that way laid the foundations upon which, as an adulterer, he sought to rear his destructive fabric!

We will show you, gentlemen, that as early as the 26th of March, 1858, it was reported, so as to be heard by Mr. Sickles, that this Key was dishonoring him. Mr. Sickles sends for him. He stands upon his honor as a man. He denies the truth of the impeachment. He traces the author from one to another. He sends and passes notes, and when he is unable to discover the real author of the rumor, he represents it to be the work of calumny. He addresses a note to Mr. Sickles, speaking of the ridiculous and disgusting calumny. We will be able to show you that the intimacy with Mrs. Sickles did not exist at the time of that note, at all events, commenced a few days afterwards. To show you how base he is—when he is charged with dishonest conduct towards Mr. Sickles, he says this is the highest affront that can be offered to him, and that whoever asserts it must meet him upon the field of honor, at the very point of the pistol! He thus cuts off all communication, on the part of the world, with Mr. Sickles, thinking that his baseness would, thereby, go undetected;

and that was the reason why, for a period of nearly a year—though he was, no doubt, almost daily in the practice of his treachery upon his friend—his friend, until the development came upon him, as I shall presently state, never harbored a thought of suspicion against him. We will show you, gentlemen, that from this time until the 24th of February, 1859, his relations to Mr. Sickles appeared perfectly friendly, and that Mr. Sickles reposed every confidence in him.

On the 10th of February—and here you perceive the character of Mr. Key again, and it certainly does become very black—Mr. Key was one of a dinner party at the house of Mr. Sickles. This was a little more than two weeks before his death.

On the Thursday before Mr. Key's death, Mr. Sickles had another dinner party at his house. Mr. Key was not invited to it. After dinner, his wife accompanies some friends who have been at the dinner to Willard's Hotel, for the purpose, as she says, of enjoying a hop there. Mr. Sickles goes there after her. When he enters the room, he finds Key sitting by her; but as soon as Key sees him, he abruptly leaves the wife. Nothing but his own sense of shame could have prompted him to it! On returning home, and opening his letters, Mr. Sickles finds an anonymous letter among them, which was the origin of the discovery of his wife's inconstancy, and will be produced in evidence before you.

The substance of that letter was, that his wife was in the habit of meeting Mr. Key at a house on 15th street, between K and L—that Key had hired the house for the express purpose, and had as much use of her person as he (her husband) had. The nature of Mr. Sickles would never have permitted him to trust to an anonymous letter, if framed in the ordinary manner. He is a man of elevated character, and would treat an anonymous communication with contempt. But there was a degree of circumstantiality about this letter; it went into details, located the house, and gave him such an inkling of facts as satisfied him there was something requiring investi-

gation. He institutes one, and becomes satisfied of all but the identity of the person who visited the house. It turned out, on inquiry, that there was a house located where this was described as being, that Mr. Key had hired the house, and that he was in the habit of going there sometimes with, but oftener to meet, a female, who went in either before or after him. The only question, then, left for Mr. Sickles to solve was, whether the female who came to the house was his wife or some other person.

Now, gentlemen, behold again the cunning of Mr. Key. In selecting a house it was necessary for him to get one in a secluded place, or, at all events, in a section of your city in which witnesses could not rise against him. If he hired one out of town, it might be too far from the home of Mrs. Sickles to enable her to meet him as often as he desired; and hence he goes to a part of your city which, as I understand, is chiefly populated by blacks, knowing that what they saw or heard was not seen or heard by any one. That is all the strength there is in this prosecution. But for the disability which the law imposes upon that kind of testimony, the infamy of Mr. Key would be run before you in a stream which would disgust and sicken you. There is evidence enough, however, to get over this disability, and to prove him unmistakably and unquestionably the author of all this ruin and disgrace.

On the following day (Friday) Mr. Sickles commissioned Mr. Wooldridge, his friend, to inquire into the identity of the woman who accompanied Mr. Key to the house in question. We will show you the circumstances under which he commissioned him to do this. Mr. Wooldridge went to 15th street and arranged with the person occupying the house opposite the one rented by Key, for the use of a front room on the next day, to enable him to watch and see, in case the woman came there on that day, who she was. While there on Friday, he understood that the woman had last been at the house on Thursday. Having made the arrangement for the use of the room on the next day, he returns and informs Mr.

Sickles that the woman was last seen at the house on Thursday. On Saturday he goes to the house, and, from the room which he had engaged, he watches for from five to six hours, and, not discovering anything, returns to his boarding-house and learns that Mr. McClusky, who, I understand, is an attendant at the Capitol, had been there for him with a note, and while there Mr. McClusky returned and delivered to him a note from Mr. Sickles telling him to be exceedingly tender in the prosecution of his inquiries, for he has reason to believe that his wife is innocent, and that he wishes her to emerge from the suspicion she rested under, without the public becoming possessed of the imputation which the anonymous letter had cast upon her. As soon as Mr. Wooldridge receives the note, he goes to the Capitol and there sees Mr. Sickles, and he is then under the necessity of disabusing his mind and disappointing the hope he had indulged as to the fidelity or constancy of his wife. As soon as he saw Mr. Sickles, he told him that while at the house opposite the house in question, on 15th street, on that Saturday, he had learned that it was on Wednesday, and not on Thursday, the woman had last been there. Of course Mr. Sickles, having by inquiry satisfied himself that his wife was not at the house on Thursday, when the day was shifted to the right one, lost all confidence in her innocence. He then became satisfied that it must be his wife. Mr. Wooldridge described the article of dress which the woman who accompanied Mr. Key wore when she went to the house, and Mr. Sickles at once recognized the apparel of his wife. Conviction more and more fastens itself upon him, and he finds the hope he had indulged that she was pure, because she had not been to the house in question on the Thursday before, a fallacious and delusive one. He returns home; he questions his wife; he puts her guilt to her in such a way as that she thought she had been exposed, and, under its pressure, she acknowledged her dishonor and furnished him with a written confession of it. As soon as this confession is given to him, he sends for Mr. Wooldridge by note, and directs him, if he receives it be-

fore ten o'clock that night, to come immediately to his house, or, at all events, to come early the following morning. Mr. Wooldridge was out when the note was sent, spending the evening on some jovial occasion, some presentation or other, and did not return to his boarding-house till near midnight, and of course did not get the note in time to see Mr. Sickles that night. On the following morning, between ten and eleven o'clock, he went to the house of Mr. Sickles, and there he found him a perfectly frantic, frenzied man. Mr. Sickles comes in, throws down the written confession of his wife, tells him that the whole story has been acknowledged, and Mr. Wooldridge, with his own eyes, reads her guilt as it is embodied in her statement. We will be able to show you what the anguish and grief of Mr. Sickles were at that time. The day before he was unwilling to relinquish the idea that his wife was pure, but the proof thickened too strong against her, and he was compelled to abandon the hope of her innocence with reluctance. How must his anguish have been heightened when he discovered that her guilt was an undoubted fact.

We will be able to show you, by the testimony of Mr. Wooldridge, all that transpired at Mr. Sickles' house on that memorable Sabbath—that Mr. Sickles was in a most frantic state—that he was unable to fasten his mind upon any subject—that he seemed to be utterly destitute of reflection, and that there was nothing in his condition, beyond his indications of grief, to show the possession of that immortal part which distinguishes man from the brute creation. After Mr. Wooldridge had been at the house some time, Mr. Sickles proposed to send for Mr. Butterworth to take charge of his wife, and see that she was forwarded to her parents in the city of New York. That is how Mr. Butterworth came to be introduced into this matter. Mr. Butterworth was at the time at the house of Senator Gwin or some other well-known resident of this city, and as soon as he receives the word he hurries to the house of Mr. Sickles and there encounters him. If Mr. Sickles was not perfectly demented at the first knowl-



edge of his shame, how must his frenzy have been heightened as he had to impart the knowledge of that shame to his friends, one by one, as they entered his mansion? Grief, when its cause is shame, becomes tolerable to a certain extent when we can keep our shame to ourselves. Is it not the tendency of human nature to bury such secrets in one's own bosom? There are griefs which we delight to impart to others. When the icy hand of death has closed in its sleep the eyes of a relative or friend, we delight in imparting our anguish to those who come with warm hearts and cordial hands to administer to us the balm of consolation. But when the cause of grief is shame, man hides his diminished head, for he feels that it is diminished by the disgrace which afflicts him. Gentlemen of the jury, I ask you what must have been the anguish of Mr. Sickles at this time? He had not only the first knowledge of his wife's infidelity to contend with, but as his friends presented themselves, one by one, he was forced to tell them, as an explanation of his condition, of her dishonor and her downfall. The scene which took place while Mr. Butterworth was at his house will be described by Mr. Wooldridge.

Some considerable time before Mr. Butterworth came there, the colored servant man, on raising the shade of the front window of Mr. Sickles' library, saw Mr. Key, and remarked it to Mr. Wooldridge, who looked, and saw him come through the gate of the Park and cross the street, in which Mr. Sickles' house was, and go up past the President's mansion. Key, no doubt, was perfectly desperate on this occasion. He had not seen Mrs. Sickles since Thursday. He had not been able to get signals to or from her. All communications had been cut off. He had hired his house for nothing. Days had gone by since he had rifled the casket of his friend's affections. Like all libertines, he was "eager for the fray" of his passions. He was carried headlong by them, and was shamelessly, "in the soft gush of the Sabbath sunlight," watching the castle of his neighbor. You can account for Key's conduct on that memorable Sabbath in no other way.

It was between twelve and one o'clock in the day, when Mr. Butterworth first came to Mr. Sickles' house. After he had been there some time, passing through the harrowing scene that was enacted on his first meeting with his wronged and injured friend, he left, saying that he was going to Willard's Hotel. When he had been gone about ten minutes, Mr. Wooldridge looked at his watch, and it was twenty-five minutes to two o'clock. Almost immediately after this, as he (Wooldridge) sat at the front library window, he saw Key passing the house on the opposite side of the street, going toward Pennsylvania avenue. He was with a lady and gentleman, walking on the outside of them, next the curbstone. As he passed, he took out a white pocket handkerchief, and waved it towards Mr. Sickles' house, looking at the same time, towards the upper part of the house. When he got to the avenue, he shook hands with the gentleman, and entered the park, and the trees hid him from Mr. Wooldridge's view. The gentleman and the lady went down the avenue, on the outside of the park. Mr. Butterworth returned in a few moments, and as he entered, Mr. Wooldridge told him what he had seen—that Key had just passed—"You did not tell Mr. Sickles," said Mr. Butterworth. "No," said Mr. Wooldridge, "I could not find it in my heart to do so." They were resolved to keep it from Mr. Sickles if they could, that Key was prowling on the outside of his mansion, with dishonorable intentions toward him.

Instantly Mr. Sickles came down stairs. I do not fill up the interval between Mr. Wooldridge's coming there on that day, and this point, with a minute statement of what Mr. Sickles said or did. It would occupy too much time. At this point he rushed down stairs in a perfect frenzy. He had seen Key pass with the lady and gentleman, and wave his handkerchief. We have understood that the prosecution mean to try to show that the handkerchief was waved at a dog, which, at that moment, happened to cross Key's path. He must have imagined sometimes that he saw dogs, for, on some occasions, we will prove, he waved it, when there was

no other object in view but Mrs. Sickles or her house to wave it at. It was, however, his signal for an assignation. Mr. Sickles, now, knew that his wife had been dishonored by this man; and, also, the meaning of the wave of the handkerchief. He was frenzied. We will show you that so close and compact were the occurrences at this time that the inmates of the house did not know, until they heard that Key had been shot, that Mr. Sickles was outside of the house.

Mr. Butterworth left the house again. Mr. Wooldridge saw him go down the steps of the stoop. He was alone. Mr. Sickles was not with him. Mr. Wooldridge went to the drawing room, and got the stereoscope that was there—brought it to the front library window, and as he was arranging it on the window sill, he saw persons running to the further corner of the park. He did not dream that Mr. Sickles was outside of the house, until a colored girl came to the house and announced that Key had met his death. Reflect, gentlemen, for an instant upon the condition of Mr. Sickles' mind at this juncture.

The night before his wife had acknowledged her guilt; he had passed the night without sleep; he had sighed and sobbed it away; as his friends came in he was compelled to unbosom to them the story of his wife's dishonor; to crown all, he saw the adulterer, his flag floating, as it were, for the purpose of inviting or enticing his wife from her home. It is for you to say, from these facts, what must have been the condition of his mind at the time he went into the scene that resulted in the death of his wrongdoer.

After specifying a few other facts I have done. Why was Mr. Key constantly in the vicinity of Mr. Sickles' house? We will show you that he lived in another part of your city, a very considerable distance from it. Yet he was in the habit of riding by it on horseback at all hours, and of showing himself off in every way he could to the greatest advantage. In his intercourse with Mrs. Sickles, too, he resorted to and practiced all the blandishments, which adulterers study and cultivate, to reach the target they have set before them. How

did he make his assignations? If he encountered her in the President's mansion, he made them there. If in the mansion of some Senator, he made them there. He tainted with his vile appointments, the atmosphere which your wives and daughters—the virtuous females of this district—were obliged to breathe. The very air about was laden with them. He followed his object wherever she went. She could hardly get more than a hundred feet from her house before he was unexpectedly by her side. If she walked, he was on foot. If she was riding in a carriage, it was stopped, and he got in, and rode with her for two or three hours; and the directions to the driver were, that it must be driven through the back streets. He became a subject of kitchen comment. He was called by the servants “Disgrace.” That was the name bestowed upon him by the kitchen department of Mr. Sickles’ house. The District Attorney of the County of Washington had become a byword and a reproach in the kitchen of one of the houses in the district; and as often as he entered the house, or was seen approaching it, the remark was made, “here comes Disgrace.” . . . Even the servants in the house felt the pressure of his infamous intentions to the defendant’s wife.

We will show you, gentlemen, that between the 25th of January and the 25th of February last, Mrs. Sickles and the deceased were seen to enter the house on 15th street from six to eight times—sometimes by the front door, and sometimes by the rear door, reached through an alley way in the rear. We will show you that, on one occasion, about two weeks before his death, they were seen walking together on 16th street, in the rear of this house, when, owing to the mud, the walking was not fit for females—at least in that section of your city. We will show you that on or about the 16th of February last, the deceased was spoken to on 15th street, between L and M. while walking with Mrs. Sickles, and that he was whirling a night key in his hand at the time. That they were plainly intending to enter this house, and were watching for a chance to enter it unobserved. That they

concealed themselves some time behind a house on the corner of 15th street and M. That they were then followed to the corner of L street, through L to 16th street, through 16th street to K, through K to 15th street, and then to M. That the walking was very muddy, and that the streets were crowded with persons looking at them; for, while they thought they were unobserved, they were the "observed of all observers." We will show you that on or about the 23rd of February last, they were at the drug store together, corner of Vermont avenue and K street, and that they left there together, and disappeared so as to leave no doubt that they entered the house in question. This was between three and five o'clock in the afternoon. We will show you that the shawl the deceased wore on that afternoon was found in this house, after his death, and identified. We will show you that he was continually haunting Lafayette Square, opposite Mr. Sickles' house, which he watched, and at which he was in the habit of shaking his handkerchief. That on the Sunday week before he was shot, he was in the square, doing this very thing. We will show you that some three weeks before his death, Mrs. Sickles was seen to enter the President's mansion, and that he followed her there. That she came out and entered a house near the Banker's (Corcoran's), and that he followed her there. This seems to have been the course of his life. She could go nowhere that he did not follow her. No house was safe against him. It was his whole business. We will show you that on the Thursday before his death, he was seen walking with Mrs. Sickles and her little daughter, near the cabinet-maker's (Green's), on Pennsylvania avenue, and that he was reading a letter evidently to her, so that the people in the street could and did see him. This letter, no doubt, was similar to the one sent to Mr. Sickles (though not opened by him till late that night), apprising the deceased of the danger he stood in from the discovery of his relations to Mrs. Sickles. We will show you that not many days before the shooting, while Mrs. Sickles was standing on the stoop of her husband's house with her

little daughter, this adulterer waved his signal at her—proving that the waving of the handkerchief, in which he indulged so much in that neighborhood, was meant for her. We will show you that he went to market with her; and that, on one occasion, when the family marketing was selected, much to the amazement of the butcher, who could not appreciate the reason of such familiarity, Mrs. Sickles handed her portemonnaie to him, and directed him to pay the amount of the butcher's score. So that wherever Mrs. Sickles went, and whatever duty she was engaged in, whether it was the merely social duty of calling on her friends, or the domestic duty of providing for her family, Mr. Key was her constant gallant; he was about her and around her, and paid her those attentions which, had her husband been disengaged, it was his duty and his right only to have bestowed upon her.

We will show you by the testimony of the defendant's coachman to what an extent the intimacy between the deceased and Mrs. Sickles was carried. . . . I forbear invading the details here.

We will show you that the deceased, like most men who are engaged in his practices, was in the habit of carrying deadly weapons; and that when admonished by a friend that his attentions to Mrs. Sickles had been noticed, and that he had better be careful, he replied, that he was ready for any contingency.

In this case, the effort is evidently being made by the prosecution, to induce you to turn the defendant over to executive clemency. It has been, in effect, said to you: "Render your verdict of guilty here, and Mr. Sickles can apply at the proper door for the interposition of executive clemency." In answer to this, I entreat you not to divest yourselves of your rights as jurors. You never before occupied such a position surrounded with the honor which now environs you. You may never occupy such a position again. It is the honor of a lifetime. You were never before called upon to declare so solemn or important a verdict, as attaches to the decision of the issues which are here presented for your determination.

The feelings which should prompt the Executive to annul your verdict, are the feelings which should warn you against, and turn you from its rendition. If the Executive could interfere at all, it could be only upon the ground that the defendant, at the time of the commission of this act, was the instrument in the hands of his God, for the purpose of executing in a summary way, the judgment of his Maker. That is the very question which you are to pass upon here. Was the defendant an involuntary instrument in the hands of some controlling and directing power, for the purpose of putting an effectual termination to the adulterous career of the deceased?

Whenever a question, appealing to similar feelings of morality, has been put to other juries, they have not sought to evade the responsibility of answering it. They were proud of the glory of being permitted to do so, and fearlessly and promptly have they given it a response. Less than the imitation of their example, on your part, would be a violation of your duty—do I go too far when I say, a disregard of your oaths? Mercy is your attribute, as much as it is that of the Executive. It should temper all your deliberations.

I propose here calling your attention to a few, out of a number of cases in which juries have refused to sanction the principle upon which this prosecution builds.

The first is related by Lord Erskine, in his celebrated opening for the defense on the trial of Hadfield. It was the case of a woman who was tried in Essex for the murder of a Mr. Errington. He had seduced her, lived with her, and then turned her off for another woman, whom he had married, or (as Erskine said), "taken her under his protection." She went deliberately to his house, and shot her wrongdoer. She was goaded to her act by a sense of injury; and after her acquittal, she became absolutely insane. She was not insane when acquitted; and Lord Erskine rather mourned over her acquittal, taking place as it did, for it conflicted with his favorite idea of insanity from delusion, a view of which you have already had. He advocated the principle that real wrongs produced violent resentments; imaginary ones, insan-

ity. The jury, in the case of this unfortunate woman, read from, and practiced upon, the Book of Human Nature. They spurned all fine-drawn theories, looked to the impulses of the human heart, and held, that with such a provocation as she had desperation did not exhibit itself in a criminal form. This was the voice of an English jury.

To come to our own country. In the neighborhood of twenty years ago, if I remember right, a father was tried and acquitted in the city of Philadelphia, on the charge of murdering his own daughter. He was a confectioner there. His daughter had married against his will, and the shock to his paternal feelings was such that he took her life. He acted upon real facts, which would hardly tally with Lord Erskine's doctrine of delusion; and yet, a Pennsylvania jury, considering the workings of the provocation upon the paternal heart, refused to consign him to punishment.

In the year 1843, Singleton Mercer was tried in the State of New Jersey on a charge of murder, in killing a young man who had forcibly deflowered his sister. He had been some forty hours under the influence of the feeling, which prompted him to take the life of the deceased. The deceased and a friend, in a close carriage, got on board the ferry-boat to cross from Philadelphia into the State of New Jersey. As the boat was just nearing the New Jersey shore, the friend of the deceased, who had left him alone in the carriage, hearing several pistol reports in its direction, went to the carriage to see what it meant. When he arrived there, he found the deceased in a dying state. Mercer was arrested on the boat; did not deny the deed, and manifested a perfect resignation to his fate. He was tried in a State which prides itself upon the severity of its justice, and yet, an honest jury acquitted him of all criminality. They sympathized with the condition of his breast; allowed for the fury into which a mortified and outraged brother would be thrown, under the circumstances, and refused to stamp his act with censure. The same spirit pervaded the whole public mind of the State, and the manifestations of delight, of joy, on the rendition of the verdict



(were it not that we know they were so) might be taken, from the accounts in the public journals, to be too extravagant for belief. How much stronger would this brother's case have been, had he caught the deceased in his guilt; and yet not so strong as the defendant's—for to his relation not only love, but duty attached itself. The former brooded over the exciting cause. The latter did not, for it was first exploded in the very act, into the commission of which, it precipitated him.

The case of the husband in Virginia cannot be unknown to you. The adulterer was found shot in his bed. The husband, accompanied by a brother and a friend, went to the apartment of the adulterer quite early in the morning. What took place there, no human testimony outside of it could supply; but certain it was, the adulterer was shot and died. The Mayor of Richmond committed the husband, and those that accompanied him, on a charge of murder. There is in that State what is called an Examining Court, being a tribunal between the committing magistrate and the court of trial. Its office appears to be to decide, from its own investigation of a matter, whether any criminality is sufficiently made out against an accused party to warrant his being held to answer at the court of trial. This case came before that court, and if I am correctly informed, did not "send on" the proceeding to the court of trial, but discharged the accused from further prosecution. This case occurred in the city of Richmond, in the year 1846, and is another proof that the vindication of marital honor can hardly be perverted into an offense. I have perused the argument of one of the counsel for the defense (Mr. Lyons), and it is an eloquent exposition of the awful magnitude of an interference with the marriage relation.

In the year 1844 Amelia Norman was tried in the Court of General Sessions, at the city of New York, on a charge of assault and battery with intent to kill. It appeared from the testimony that she had been seduced by the prosecutor under circumstances of great cruelty; and that after serving him in

the capacity of mistress, until he was sated with her charms, she was finally abandoned by him. She tried to persuade him to do something for her. Her health had been much impaired during her association with him, and she requested a little to stand between her and want. He remained obdurate. She became frantic; furnished herself with a dirk knife, went to his hotel, in the great thoroughfare of our city, saw him in the broad daylight in the act of entering it, once more besought his aid, was repulsed by him, and, in her agony, stabbed him, and well-nigh deprived him of his life. She was taken into custody on the spot. Her situation and her wrongs came to the knowledge of a distinguished authoress, whose sympathies were enlisted for her. This lady took her under her protection, ministered to her during her imprisonment, and employed counsel to defend her. That counsel was my own brother, who is now among the dead. When he ascertained the circumstances of the case, he returned his fee, and refused to serve under any other employment than that growing out of his compassion for an injured woman. Her trial came around; it lasted several days, and resulted in her acquittal. So great was the public interest in her, that on the night the verdict was rendered, the courthouse was besieged by thousands of our citizens, and when the result was announced, the welkin rang with the plaudits of an excited populace!

The case of Jarboe, to which I have already referred, and with which you must be familiar, is another, and a fresher instance of a jury refusing to stigmatize, as criminal, obedience to the instincts of our natures.

Gentlemen of the Jury, how instructively do these cases come home to you. The rejected mistress—the contemned father—the disgraced brother—have been received into the merciful keeping of discerning juries. In matters of natural right, the intelligence of the whole world is in unison. What an English jury commenced, American juries have not refused to imitate or extend. Shall it stop with the records of the past? Or shall the husband, whose hopes have been

broken, like the tender flowers (as it were), upon their stocks, be placed behind the same shield which has protected other defenders of our dearest rights? Even in your own district has been planted the seed of whose growth we seek to reap the harvest. The honor of initiating in this locality the doctrine of natural justice, under proper qualifications, has not been reserved for you. It has already taken root here. You can follow the example which has been set you. You can apply it to a new wrong. You can announce that a husband's feelings and a husband's happiness must not be made light of. My client, it is true, has not aimed at being a public champion; but his doom cannot be fixed without affecting, more or less, by the precedent you establish, the great moral interests of society.

Will you or not give your adherence to the examples which have been rehearsed to you? You have your own immediate citizens, and the citizens of other States, where justice is not sold and where it cannot be bought, putting the redemption of a juror's oath upon the principles which, in one aspect of it, constitute the pillar of this defense. Will you renounce your allegiance to those principles? Will you refuse to yield yourselves to them? Or will you rather follow in the wake of such precedents and render that judgment which will accord with perfect justice, and, at the same time, be consistent with the adulterer's offense.

Gentlemen of the Jury, shall the abominable doctrine go forth from this Court that pecuniary compensation is the only mode of stanching the bleeding wounds of a husband? What is the effect of that doctrine? It tells every man that if he will pay the price which a jury may set upon his seduction or his adultery, he can enter any house he pleases and rifle it of its purest contents. Is that to be the doctrine of your District? Are we to have a mere list of rates, or a mere tariff of charges. Is the lower house of infamy to fix one, and the higher house of infamy to fix another? Shall an American jury say to the seducer or adulterer what he shall pay for his crimes. The very moment you act upon that

principle you tell every libertine he may enter any house in your District, if he is only ready to foot the bill which shall be presented by an American jury, and stand clear of all human or divine accountability. In God's name repudiate that principle from your verdict. You sit, where it is your inestimable privilege to sit, under the immediate protection of that fire which burns upon the great altar at which all the other torches of our government are lighted. You are here, at the seat of our Federal Government. You are overshadowed by the illustrious name of Washington. Let its recollection inspire you with fitting and becoming thoughts—and be reluctant—be loath to incorporate into your verdict a principle, which—if it is the one upon which you act—will have a more demoralizing public effect than any other that could be sustained by an intelligent jury?

#### THE TESTIMONY FOR THE DEFENSE.

*William Badger.* Am Navy Agent at Philadelphia Navy Yard. Knew the deceased and Mr. Sickles equally well; the relations between Key and Sickles were of the most intimate character; knew the wife of Sickles very well. Was at a dinner party given Mr. Sickles on Feb. 10th, last, Mr. Key was there.

Next day they were at my hotel at dinner. Mr. Key and Mr. and Mrs. Sickles as guests of my daughter.

*John B. Haskin.* Am a member of the House of Representatives; have known Mr. Sickles fifteen or twenty years; was introduced by Mr. Sickles to Mr. Key in the month of March, immediately after the inauguration

of President Buchanan; visited frequently at the house of Mr. Sickles; Mr. Key was frequently there; recollect a whist party at Marshal Hoover's. Mr. Key and Mr. Sickles were there; a party of gentlemen exclusively. Sickles on that occasion mentioned and urged Key's reappointment to the office he held at the time of his death, and said that he believed the President would reappoint him. Mr. Key thanked him for his intercession, and hoped he would persist in urging his claims for a reappointment. The relations between Mr. Key and Mr. Sickles were that of the closest and nearest and dearest character.

*Daniel Dougherty.\** Am a

\* DOUGHERTY, DANIEL. (1826-1892.) Born Philadelphia. Admitted to Pennsylvania bar 1849 and became prominent as a practitioner and politician. Popularly known as the "Silver-tongued Orator."

member of the bar of Philadelphia; have had the pleasure of enjoying intimate acquaintance with Mr. Sickles; I visit at the house of Mr. Sickles both in New York and Washington; was at a large dinner party at Mr. Sickles' house on the Thursday before Mr. Key's decease. After we had retired from the table to the drawing room, Mrs. Sickles went to Willard's Hotel about 10 o'clock; I also went to the hop; did not go in the same carriage with her; about an hour afterwards Mr. Sickles came in alone; saw Mr. Key at the hop; think he was first in conversation with Mrs. Sickles; afterwards saw him in conversation with Mrs. Dougherty; was at a reception at Mrs. Sickles' house; saw Mr. Key there, that was the 22nd of February.

*April 12.*

*John J. McElhone.* Reside in Philadelphia; am one of the reporters for the Congressional *Globe*; Visited Mr. Sickles frequently, and was on terms of friendship with him; had frequent opportunities of knowing the relations that existed between Mr. Key and Mr. Sickles. When I saw them together they always held towards each other the language and appearance of good friends; Mr. Key frequently expressed his friendship for Mr. Sickles; from all I saw and from my acquaintance with both of them, I concluded in my own mind that they were friends.

*Jonah D. Doover.* Reside in Washington; was formerly United States Marshal; Mr. Key was my most intimate and cherished friend for ten years or more; first became acquainted with Mr. Sickles sometime after

the inauguration of President Pierce. Mr. and Mrs. Sickles stopped at my house two or three weeks as guests; introduced Mr. Key to Mr. Sickles. The relations which existed between Mr. Key and Mr. Sickles were relations of friendship. Mr. Sickles was the friend of Mr. Key for reappointment to his office at the time Mr. Buchanan came into power. Know at the time of a correspondence between Mr. Key and Mr. Sickles; was privy to it, and everything relating to it, being at that time friend of both parties. Bore the correspondence referred to, accompanied by a note from Mr. Key to Mr. Sickles. Afterwards Mr. Key told me that he had received a note from Mr. Sickles telling him that so far as that affair was concerned he was perfectly satisfied, and that he hoped their relations would continue as previously. Wednesday, the 23d of February, Mr. Key came to my house; he brought with him Laura, the daughter of Mr. Sickles; left the child and went away. Saw him again the day before his death, near 12 o'clock.

*Mr. Carlisle.* Did Mr. Key say that in that letter Mr. Sickles had said he had no objection to Mr. Key's visiting the house when invited? He said that Mrs. Sickles wished their relations to be as friendly as heretofore; there was no qualification. In my interview with Mr. Sickles he said he had always liked Mr. Key; that he thought him a man of honor, that thing shocked him when he first heard of it, but that owing to Mr. Key's and my assurances, he was willing to meet him as formerly.

*Mr. Brady.* What was the

transaction said to be which occasioned this interview between you and Mr. Sickles?

The JUDGE ruled that no evidence of this character could be received, except the declarations of kindness on the part of the prisoner towards the deceased; that was the limit of the circle of inquiry.

*John H. Goddard.* Am chief of police in this district; have in my possession an opera glass handed to me by Mr. Sickles on the day of his arrest. I have it in my pocket. (Produces a small black opera glass.) The mud and dirt on the glass was on it when I received it. It is in the same condition as when I received it.

*Rev. Smith Pynes.* Am a clergyman of the Episcopalian church. Saw the prisoner on the Saturday preceding Mr. Key's death in the afternoon; was struck by his appearance; thought there was a wildness about him; he seemed to be like a man who was in great trouble of some kind or other; said to my son how very bad or how very strange he looks!

*Robert J. Walker.*<sup>b</sup> On Sunday, 27th of February, saw Mr. Sickles in his own house in the afternoon. As he came in his manner appeared excited. There was something strange and unusual about it. His voice was somewhat different from the manner in which I had usually heard him speak. He advanced and took me by the hand. He said, "A thousand thanks for

coming to see me under these circumstances." He became very much convulsed indeed; threw himself on the sofa, covering his face with his hands; broke into an agony of unnatural and unearthly sounds, the most remarkable I ever heard — something like a scream, interrupted by violent sobbing. His condition appeared to me very frightful, appalling me so much that I thought if it lasted much longer he must become insane. He was indulging in exclamations about dishonor having been brought on his house, his wife and child. He seemed particularly to dwell on the disgrace brought upon his child; endeavored to pacify him. Accompanied him from there to the jail.

*Cross-examined.* Butterworth and Goddard came in when these terrible convulsions occurred; thought I would go for a physician.

Do not know who sent for the Chief of Police. My impression was that it was Sickles. After a time, Sickles became calmer, but did not resume his natural appearance. He quit sobbing and crying for some time.

To *Mr. Carlisle.* Could compare Sickles' condition to nothing but an agony of despair. It was the most terrible thing I ever saw in my life. He was in a state of frenzy at the time, and I feared if it continued he would become permanently insane; his screams were of the most frightful character; they were unearth-

<sup>b</sup> WALKER, ROBERT JAMES. (1801-1869.) Born Northumberland, Pa.; United States Senator, Mississippi, 1836-1845; Secretary of Treasury, 1845-1849; Governor of Kansas, 1857-1858; Financial Agent for United States in Europe, 1863-1864; died at Washington.

ly and appalling, and were interrupted by something between a sob and a moan. Sometimes he would start and scream in a very high key. He appeared in a state of perfect frenzy. It was much stronger than grief. It exhibited more alarming symptoms than any grief I had ever witnessed before. I went with him to the jail because I feared a recurrence of his paroxysms of grief and despair; I remained at the jail from one to two hours; no physician saw him during that time.

*Francis Mohun.* Saw Mr. Sickles on 27th of February last near sundown; was standing in front of a house which I own on the avenue. Mr. Sickles came along; looked to me in a very excited condition; thought there was some very high excitement on his mind at the time; thought no more of it till I heard next day of this occurrence. I then spoke of observing him in that excited condition; said I thought he was crazy or insane. He was walking rapidly, more rapidly than I ever observed him before. There seemed to be a strange movement about his person and head; heard rumors about the city which perhaps made me observe him the more closely.

*Bridget Duffy.* Live in Mr. Sickles' house in the capacity of nurse and lady's maid, and partly chambermaid; Saturday before Mr. Key's decease Mr. Sickles came home in the even-

ing, between five and six; there was some unhappy feeling between Mr. and Mrs. Sickles; Mr. Sickles went downstairs; he did not eat, but returned to his bedroom; he asked me to fetch him up something to eat, which I did; his manner and appearance seemed troubled; Mrs. Sickles was in her bedroom; heard loud talking between Mr. and Mrs. Sickles; their door was partly open; this was after six o'clock. I signed this paper in the bedroom when Mr. and Mrs. Sickles were present, at Mr. Sickles request. Miss Ridgely signed it; I don't know what then became of the paper; know Mrs. Sickles handwriting; that is hers to the best of my belief. I don't know whether Mr. Sickles went to bed that night; don't think Mrs. Sickles went to bed; she lay on the floor all night, where I saw her on Sunday morning sitting on the floor with her head on a chair; she stayed in that room all day. Before I went to bed heard exclamations and sobbing; heard Mr. Sickles cry; also Mrs. Sickles. In the morning I met Mr. Sickles on the stairs; he held his face in his hands and was crying and sobbing and in great trouble; heard crying in the study before I saw Mr. Sickles; believe Mr. Wooldridge was in the study, but did not see him.

*Mr. Brady.* This paper we propose to read in evidence. It is Mrs. Sickles' statement to her husband, and is as follows:

I have been in a house in Fifteenth street with Mr. Key. How many times I don't know. I believe the house belongs to a colored man. The house is unoccupied. Commenced going there the latter part of January. Have been in alone with Mr. Key. Usually stayed an hour or more. There was a bed in the second-story. I

did what is usual for a wicked woman to do. The intimacy commenced this winter, when I came from New York, in that house—an intimacy of an improper kind. Have met half a dozen times or more, at different hours of the day. On Monday of this week, and Wednesday also. Would arrange meetings when me met in the street and at parties. Never would speak to him when Mr. Sickles was at home, because I knew he did not like me to speak to him; did not see Mr. Key for some days after I got here. He then told me he had hired the house as a place where he and I could meet. I agreed to it. Had nothing to eat or drink there. The room is warmed by a wood fire. Mr. Key generally goes first. Have walked there together say four times—I do not think more; was there on Wednesday last, between two and three. I went there alone. Laura was at Mrs. Hoover's. Mr. Key took and left her there at my request. From there I went to Fifteenth street to meet Mr. Key; from there to the milk woman's. Immediately after Mr. Key left Laura at Mrs. Hoover's. I met him in Fifteenth street. Went in by the back gate. Went in the same bedroom, and there an improper interview was had. I undressed myself. Mr. Key undressed also. This occurred on Wednesday, 23d of February, 1859. Mr. Key has kissed me in this house a number of times. I do not deny that we have had a connection in this house last spring, a year ago, in the parlor, on the sofa. Mr. Sickles was sometimes out of town, and sometimes in the Capitol. I think the intimacy commenced in April or May, 1858. I did not think it safe to meet him in this house, because there are servants who might suspect something. As a general thing, have worn a black and white woollen plaid dress, and beaver hat trimmed with black velvet. Have worn a black silk dress there also, also a plaid silk dress, black velvet coat trimmed with lace, and black velvet shawl trimmed with fringe. On Wednesday I either had on my brown dress or black and white woollen dress, beaver hat and velvet shawl. I arranged with Mr. Key to go in the back way, after leaving Laura at Mrs. Hoover's. He met me at Mr. Douglas'. The arrangement to go in the back way was either made in the street or at Mr. Douglas', as we would be less likely to be seen. The house is in Fifteenth street between K and L streets, on the left hand side of the way; arranged the interview for Wednesday in the street, I think, on Monday. I went in the front door, it was open, occupied the same room, undressed myself, and he also; went to bed together. Mr. Key has ridden in Mr. Sickles' carriage, and has called at his house without Mr. Sickles' knowledge and after my being told not to invite him to do so, and against Mr. Sickles' repeated request. Teresa Bagioli.

This is a true statement, written by myself, without any inducement held out by Mr. Sickles of forgiveness or reward, and without any menace from him. This I have written with my bedroom door open, and my maid and child in the adjoining room, at half past eight o'clock in the evening. Miss Ridgeley is in the house, within call.

Teresa Bagioli.



Lafayette Square, Washington, D. C., Feb. 26, 1859.

Mr. and Mrs. Pendleton dined here two weeks ago last Thursday, with a large party. Mr. Key was also here, her brother, and at my suggestion he was invited, because he lived in the same house, and also because he had invited Mr. Sickles to dine with him, and Mr. Sickles wished to invite all those from whom he had received invitations; and Mr. Sickles said "do as you choose."

Teresa Bagioli.

Written and signed in presence of C. M. Ridgeley and Bridget Duffy, February 26, 1859.

The *District Attorney* objected to its being put in evidence.

Mr. Brady stated the ground on which they offered it as a communication to Mr. Sickles, affecting his mind, and producing or continuing the excitement under which he labored.

The *District Attorney* argued that the evidence was inadmissible on many grounds; it struck at the root of several of the most cardinal rules of evidence; in the first place it was hearsay, and therefore objectionable; it was a communication passing between husband and wife—parties who were excluded from being witnesses for or against each other. This rule not only extended to direct testimony, but it went further, and prevented frequently and generally collateral matters between husband and wife being given in evidence. This evidence, he understood, was not offered on the ground of justification, but on the ground that the statement produced temporary insanity. If the husband was thrown into a state of insanity by this communication, that fact could be distinctly proved without the communication itself being put in evidence; his insanity could be proved by the conduct and movements of the prisoner, but could not be proved by the character of any communication made to him. Its necessary tendency was not to produce insanity; some minds would be affected more and some less by such a communication, and therefore it could not be put in evidence to prove insanity.

Mr. Brady argued the admissibility of this confession. It was offered for the purpose of accounting for the state of mind in which the defendant was at the time of the homicide. It helped to constitute that irresistible pressure under which he acted; in reference to either murder or manslaughter, the state of mind was all important. How far that confession would act on the prisoner's mind would be a matter for the jury to decide; but the relevancy or competency of the evidence was entirely another question. It was not alleged by the other side that this confession was got up by collusion between the wife and husband. If that allegation was made, it would be a matter for the jury to pass upon as to whether it was true or not.

It was not disputed that the statements of the wife were made in good faith, nor was it disputed that they were true. The defense did not seek to show that the prisoner's insanity was produced by this confession, but that he drained a cup of bitterness filled and furnished to him by the hand of the wife, which might well account for

the madness of any human being. He held that if this cup of bitterness, even though it were false, were presented to him by one in whom he had a right to have confidence, and if it buried reason from its throne, it was evidence in the case. A husband was not bound to institute a trial into the truth of a communication made by his wife. The husband who acts upon the information of his wife is not responsible for the truth or falsity of that statement. They offered this confession as having instilled madness into the mind of the husband, and as having led him to commit the act for which he stands indicted.

If a wife informed her husband that she had been assaulted or insulted in the street, and if the husband rushed out, and in an affray with the offender, hurt or killed him, would it be held that the husband was to be deprived of the right of giving in evidence the communication which led him to the commission of the act. In the case of Jarboe, decided in this court, had not prisoner acted on the statement of his sister, and was not that hearsay evidence as much as this?

So in the case of Singleton Mercer. In that case the prisoner was permitted to show, by his sister, that she had been seduced, and that she informed her brother of it. But for that, Singleton Mercer would have died upon the scaffold. In the case of Amelia Norman the same principle was held. But the prosecution here contended that the statement of a wife to her husband was inadmissible, because it came within the rule which forbids a wife to be a witness for or against a husband. But the defense did not propose to place Mrs. Sickles on the stand or to make her, in the technical sense, a witness.

Mr. Brady referred to Greenleaf on Evidence, sec. 62, showing that in collateral matters not striking at the material interests of both, the declaration of either husband or wife was admissible. Waive the privilege, it is the husband who seals the mouth of his wife, and the wife who seals the mouth of her husband. This privilege was held as a privilege in favor of the relation and the parties to it. But if the husband choose to waive that privilege and permit his wife to open her mouth, on what principle of law is he to be denied that right? Besides, this confession was part of the *res gestae*.

1 Greenleaf, sec. 108, showed that there are other declarations which are so connected with the principal fact as to cease to be hearsay. As to the time that intervened between the confession and the homicide, it made no difference at all. Although made the night before, this statement, we may be sure, loaded every breath that came from the defendant from the time he first saw or heard of it, down to the moment when the act was committed, which placed him in his present condition. The grief he went through has been painted by the artless servant girl before this jury. It was the burden of his wailing and the heavy weight of his lamentation all through the night; every moment his eyes read it; the tongue of his wife re-

peated it in his ears; it never became still, and time in no way took from the freshness of the provocation.

If, therefore, the fact that it stood the interval of twelve or fifteen hours until the commission of the homicide is relied on as excluding it, then we say that the constant recollection of it haunting the memory of the defendant, his uninterrupted grief during that ever-to-be-remembered night, constitutes the bridge which covers over the chasm, and connects the homicide with this statement as one of the moving or superinducing causes. Where is that curtain to drop? Will the law assume an hour of the day as a period which we cannot go in our inquiries, and up to which we can go? Will your Honor, as a matter of law, say that we shall take the hour of ten o'clock on that Sunday morning, that we shall question up to that time, but shall not go behind it? Why shall we not go to the hour which stood before that, and to the hour which stood before that, and so on till we travel back through the vigils of the night, and come to the very moment when the contents of that document were poured into the ears of that afflicted and distressed husband? If throughout that long line we have to trace back this homicide to the moving cause, I ask on what principle can your Honor exclude this statement, even though it may have come into being a few hours before the occurrence of the principal fact? Has it come to this, that the accountability of the defendant shall rest on any other foundation than the working of his own soul at the time he committed the act in question? Is he, I say again, to be cut and fitted into a conviction in despite of the truth and in violation of all justice? Is the law become a bed where the principles of justice are cut off, or lengthened, so that the cruel end proposed here, may be inevitably accomplished? That is the question before this Court. Who lighted the flame in the breast of the husband we now propose to show. The materials are always there; they are in your Honor's bosom; they are in every man's bosom, and only require the application of the torch to burst into a complete conflagration. If the wife applied the torch to the temple of the husband's happiness, if it was consumed as a consequence of the avowal and confession of his dishonor, I ask, why should this husband suffer, when he rose in obedience to the instincts of his nature, and perpetrated an act for which he must receive the approval of every intelligent and reflecting man? This anguished man, when he was interrupted in the first moment of his act, turned to those who interfered and said "The man I have slain has defiled my marriage bed." Although his wife told him the story the night before, she told it to him then, she told it to him every moment, from the time he first heard it down to the happenings of that fatal event; her words were ringing in his ears; her statement was before his eyes; her body was polluted in his presence. These are the facts which we seek to put into the act—the act for which it is sought to obtain a conviction against him before this Court and jury.

It seems to me, therefore, that even though this statement may have been divided by an interval of twelve or fifteen hours from the occurrence of the main fact, the homicide, nevertheless the evidence

before the Court of the sobbing and wailing of the husband throughout the night, and of his having at the very moment of the act declared the cause which led him to perpetrate it, placing it in part on this statement, entitles this defense to the benefit of the evidence.

The *District Attorney* merely wished to say that he had understood erroneously that the application for the introduction of this testimony was put on the ground of insanity, and not on the ground of provocation, and that he had confined himself exclusively to the point with regard to insanity.

*Mr. Brady.* We will still adhere to this as the only ground and purpose for which this statement is offered in evidence, and we do not propose to invite or to engage in any discussion at this time on the question of provocation or the law which controls that. I repeat, that we offer this statement exclusively as a communication made to the accused, exciting him to that condition of mind in which he was at the time of the decease of Mr. Key.

The *District Attorney.* The material question before your Honor is whether it is contended on the other side that the prisoner was thrown into a state of mere mental excitement by this communication, or into a state of insanity. If the former, then the course of argument on the part of the United States will be very different from what it has already been. I understand that so far from that being the allegation on the part of the defense, it was that the party was thrown into a state of insanity. If it is contended that it threw him into a state of excitement, or even of frenzy, as that seems to be the expression preferred, we have authorities to cite on that point which it would be perhaps well enough to put into the possession of the defense.

*Mr. Brady* suggested that this was not a proper time for the prosecution to discuss that point. The defense, in regard to the testimony now offered reposed on his Honor's ruling in the case of Day, where his Honor went into the general question of insanity, and also into the broader question, that of the state of mind; one condition of which was, to use his Honor's language, being unhinged. In Wharton's Criminal Law, under the head of "Information going to make up the *bona fides* of an act," it is said: "That there are several qualifications to the rule by which hearsay evidence is excluded, and that the information and circumstances on which a man acted, whether true or false, become subjects of inquiry, and are material and original evidence."

If it became necessary to prove that a man had been afflicted with a headache which was so intense as to affect his reason, the only way to show it would be by his own declaration. Not all the physicians of the world could determine whether a man had a headache or not. It could only be known by his own statement. The same writer on evidence, in one of the sections quoted says: "That letters and communications addressed to a person whose sanity is disputed, being connected in evidence with some act done by him, are admissible for the purpose of showing whether he was insane or not."

What was the point here? It was the condition of Mr. Sickles'

mind; and what did they propose to show? The cause exciting that mind is a condition which made him irresponsible for his acts.

*April 13.*

*Mr. Carlisle* presumed that the Judge had already consulted the authorities and had made up his mind on the point, but still, he (*Mr. Carlisle*) would not have discharged his duty fully did he not oppose the offer. It was of the first importance—an importance which went the length of determining whether justice was to become a contemptible sham—that his Honor, if he admitted the evidence at all, should expressly limit the uses to which it was to be applied. It struck him that there was not entire concord in the minds of the counsel for the defense as to the purpose for which the evidence was offered, and for which it was admissible. The counsel who offered it proposed it for one purpose, and the counsel who succeeded him offered it for another. It was offered as bearing on the status of the prisoner's mind and not as proving the facts stated in it; but his colleague, showed that he meant to maintain that the fact appealed to was a fact which ought to be legally appealed to for the ascertainment of the condition of the prisoner's mind at the time of, and anterior to, the homicide. Not content with that, he claimed that the fact in question was a fact proper, with other facts to show the irresistible impulse under which the prisoner moved forward to the consummation of the scene.

Counsel for *Mr. Sickles* thought this fact was admissible, as tending to show something short of insanity in respect to the prisoner's mind, and appealed to his Honor to relax still further the rules of evidence on such a point. He argued that as it may be proved in a particular case that the prisoner quaffed the intoxicating bowl, so in this case it might be proved that the prisoner drained to the dregs a figurative cup filled with the bitterest draught. This was rhetoric, but was not law. In all cases the question is not whether the prisoner drank liquor enough to make him drunk, but whether, in point of fact he was drunk, either from little drinking or much drinking. *Mr. Brady*, however, had indicated, while confining himself to strictly legal language, that he had some enlarged ideas about the question of insanity, and referred to a case where his Honor had spoken of a prisoner's mind as being somewhat hinged. He (*Mr. Carlisle*) regarded that to apply not to an exhibition of passion, but to unsoundness of mind—to insanity. As to all the grounds distinctly taken, and the arguments incidentally made, he submitted that they must all come down to the test of the law and resolve themselves into the single question of insanity. Now, he had not heard any of the counsel claim that the prisoner was insane at the time of the homicide, and he submitted that before the evidence could be received it must be proposed on the single ground that the prisoner at the time of the commission of the homicide was insane, and when it was proposed on that ground the prosecution would be prepared to meet it. The question was, whether adultery could be given in evidence in mitigation of the crime of murder to the grade of manslaughter?

Such a case was decided in the Court of Appeals of one of the States.

*Mr. Phillips.* That was the case of a slave.

*Mr. Carlisle.* It was; but that makes no difference. We all are, or ought to be, slaves to the law. Now, what was the instrument in evidence here? and what was the fact offered in evidence as tending to prove insanity? The instrument of evidence purports to be a formal, written, deliberate and particular statement in the presence of her husband, concluding with a species of attesting clause, signed by two witnesses and with an additional clause showing that the confession was made without any fear or hope of reward. This formal, deliberate, solemn deed of renunciation of marital rights is offered to be given in evidence. The prosecution objected to it at first because it was the work of the prisoner's wife in his presence, and evidently to be inferred at his instance or directly under his control. Nobody disputed the general rule, unless, indeed, counsel, to be that the husband and wife are incompetent to be witnesses the one either for or against the other in any cause, civil or criminal, to which either of them is a party. Mr. Graham seemed to think, however, that the age of progress had modified the law, and that the rule was a species of regulation for the benefit of the husband, and which he may waive. That is not so. The wife is as incompetent to testify in favor as she is to testify against her husband. Counsel referred to a case where this Court, in the case of a double indictment, refused to allow the wife to testify in favor of the person who was on trial, because her testimony might have its effect on the case of her husband. This was not an offer to bring the wife into court as a witness, but to produce her declaration. What was the answer to that? First, that declarations are an inferior sort of testimony, and second, that where a witness is inadmissible, the declarations of that witness are inadmissible.

Dying declarations are exceptions to this general rule. But was the fact itself competent to be received? If it be admissible in evidence it is because it tends to prove something in issue. It might be admissible if offered to make up the defense of insanity. If not a link in the chain of evidence by which it is proposed to make out the chain of insanity, on what principle is it offered now? He submitted that the wife could not be permitted to contribute one grain of sand towards the building up of any defense for her husband. If there were any law of decision to the contrary he would like to see it.

*Mr. Brady* would call attention to authorities on that point, viz.: Walton and Green, vol. 1, Carrington and Paine, p. 621; Avison and Kinnerd, vol. 6, East, p. 188; Thompson and wife vs. Trevan-yon, p. 402, Skinner and Gilchrist and Bates, vol. 8, Watts, p. 355. In all these cases the declarations of the wife were admitted in evidence.

*Mr. Carlisle* should like to have had an opportunity of examining these cases. If there be any one of them which goes to impugn the principle laid down by his Honor in the case of Sullivan it had escaped his attention. Where was the case wherein the testimony or

declaration of a wife was admitted as a defense for her husband? He submitted that there was no such case. Where the fact sought to be introduced here was material for the defense, it could not be drawn from the wife. Her declaration was in law the declaration of her husband. Unless it could be shown that the prisoner's declaration was admissible, it could not be shown that his wife's declaration was. On this point of the identity of husband and wife, he should, if he had the power of the counsel on the other side, reproduce that eloquent argument they had heard the other day, when they were told that "Husband and wife were one flesh."

If this declaration were to be allowed they should have no rule on the subject, except that each particular case should stand on its own circumstances. The rulings on similar points have been various. Roscoe's Criminal Evidence showed that contrary decisions had been made in the English courts; but none of them covered exactly the point involved here. These were all civic cases. Counsel referred to the case of Hewitt v. Brown, where the question of admissibility of the wife's deposition came up. It was an action to recover the value of property in a wife's trunk, which had been lost, and her deposition was offered to prove what its contents were. While the Court held that even where a husband might *ex necessitate* be allowed to testify in his own case, the wife could not be allowed to do so under any circumstances, because she was *sub protestate viri*.

Mr. Magruder suggested that there was a dissenting opinion in that case.

Mr. Carlisle answered, that where there were several judges there was likely to be dissent, but he was happy to have but one judge in this case, as there could be no dissenting opinion. But this declaration was also offered as a part of the *res gestae*, and the counsel for Mr. Sickles had on that point referred to First Greenleaf. In Sec. 168 this writer laid down that the admissibility of matters claimed to be *res gestae* was a matter for the discretion of the judge. This, then, was a matter which addressed itself to the sound discretion of his Honor. The only tests that were laid down by Greenleaf were, that it must be contemporaneous with the matter, and must be so connected with the main facts as to illustrate its character. What was all the evidence connected with the subject? It was the testimony of the Rev. Dr. Pyne and Mr. Francis Mohun, who saw the prisoner on the evening of the 26th of February. There was conflict between them as to the time; one having seen Mr. Sickles come from his house about five o'clock, and the other having seen him going from the Capitol about sundown; and between them and Bridget Duffy, the servant, who testified to the prisoner's being in the house at dinner time and during the evening.

At the end of the extraordinary interview between Mr. Sickles and his wife, this remarkable document was produced and his Honor was asked to say that that paper—not the oral declaration of the wife, but this paper—was without parallel in the history of man

or woman! What sort of *res gestae* was that? It was not contemporaneous with the principal fact; and if it were, it was of such an extraordinary nature as, in his judgment, to require it to be excluded. Where, then, was the fact so connected with the principal fact as to illustrate its character? If it had been offered by the prosecution, for the purpose of showing the motive of the prisoner, he would not say what would have been the argument made against its admission. Did that paper tend to show that the act committed next day was either justifiable homicide or manslaughter? He submitted that it did not, unless his Honor held to the doctrine laid down by the other side—that no time was sufficient to cool down the mind of a man under such provocation, and render him observant of the law of God and man—it could not be admitted in that light. It was for the Court to draw the line here, and say whether this declaration of the wife formed part of the *res gestae*, and was so connected with the principal transaction as to be evidence to reduce the grade of that offense from murder to manslaughter. One point more, and he would close his argument. Was this declaration evidence to show the prisoner's insanity? As his colleague, the District Attorney, had said, the question really was, was there insanity?—not was there cause enough to produce insanity. It was true that the "great dramatist," who was so great a favorite with his brother counsel, had spoken of "ministering to a mind diseased," but he would like to see what expert would declare that such a declaration as this would tend to produce insanity in all or in a majority of cases. It would depend upon the moral and intellectual condition of the person. There were two classes of the community on whom he submitted it would have no such effect. One class, he said, is that body of lowly and humble men who, with fear and trembling, walk after the footsteps of their ascended Lord—who have listened to the precepts of the blessed Gospel, and who with all the infirmities of human nature about them, with prayer and watching seek at least to walk in the path which the Gospel has marked out for them. They are those who may truly quote that beautiful passage from the Scriptures, recited the other day, "Blessed is the man whom the Lord chasteneth"—they are those who see in the afflictions that come upon them here in the severing of life, the loss of children, even in the shame which is not the result of our own shamefulness; who see and feel in all these things the hand of the Father, and who hear His voice through faith saying to them, "My son, this is not your abiding place; better to suffer here in this transitory scene, where you are but a pilgrim and a sojourner, as all your fathers were; better to suffer here, to have all your suffering here; I will call you to a place where sorrow never enters, where all tears shall be wiped away from your eyes, where everything connected with you shall be pure and holy, love and peace." In the vigils of the night the smitten heart of the good man hears "that still small voice" in his affliction, his first movement is to go into the secrecy of his closet, and on his knees pour out his supplication to Him who alone can bind up the broken heart. Insanity! Why, sir, rather is it the brightening of



the mind, the quickening of the sight, which pierces through all the gloomy shadows of this world. He sees the reward of the good man, the comfort of the afflicted man, waiting for him. That is one class. There is yet another class—safe, quite safe from insanity, from such a blow as that—the confirmed adulterer, the open, shameless profligate—the man nurtured in brothels, the man breathing all his life the atmosphere of adultery and seduction; if there be such a man, he is certainly safe from the visitation of insanity because his familiar plaything has turned and wounded him. Now, to offer evidence of the fact of the adultery with the prisoner's wife as the ground to impute to him insanity, necessarily opens inquiry of the sort I have indicated; and although in this case the counsel might—for I am putting a supposition case only—be willing to go into such a question, it was not the option of parties to go or not to go into such inquiries. But he submitted, that if the introduction of such testimony be necessary to these inquiries, what sort of moral dissecting room would the court not be converted into? If such a declaration were admitted, the Court would have to go further; for the presumption thus raised would like any other presumption, have to be contested and rebutted by facts. He had not intended to trespass so long on his Honor, and he submitted the matter with all confidence, hoping the Court would exclude from its consideration any matter which it might deem not pertinent to the argument.

JUDGE CRAWFORD. The proposition that has been debated at considerable length is, to introduce the statement of a wife to her husband, for and on behalf of her husband. It is said that the paper is not offered to establish the facts contained in it, but as an exciting cause, or one of the exciting causes for that frenzied state of mind in which it is said he acted when the homicide took place. I cannot see the distinction between evidence which goes directly to exonerate the husband by the proof of a principal in a criminal cause, and evidence which would tend to exonerate him by showing that he was not in a condition to commit any crime. In either event the effect must be the same—acquittal. The *res gestae* are the circumstances which surround the principal facts, which is in this case undoubtedly the homicide. On this assumption, or principle, it was that the declaration of the prisoner, that "his bed was defiled," or "dishonored," or "violated"—for all three expressions are testified to, was received. From that has followed much of the evidence we have heard. I do not now intend to say further what are the *res gestae*. Declarations of a wife or husband, for or against each other, stand on the same footing as though it was testimony given on the stand. Suppose the wife of the defendant were in court at this moment, could she be put upon the stand? Could she be heard? Certainly not. Her testimony, or the statement sought to be used as such, is evidence, and would be in any proceeding evidence of her own criminality, and on an application for divorce might be used against her. But it would not in my judgment, have been receivable in an action for damages against the deceased, or in any other proceeding which might have been instituted against him. I am very clearly of opinion

that the statement as evidence would violate well-established principles and rules to admit it. It would have a most injurious effect upon the relations of husband and wife, in destroying their confidential identity. The proposition is therefore rejected.

*Miss C. M. Ridgley.* Reside with my mother, Mrs. Hyde; became acquainted with Mr. and Mrs. Sickles 1st of January last. Visited at their house frequently. Was at their receptions every Tuesday, and two or three times in a week to dinner. Was there on the Saturday previous to the death of Mr. Key. Mr. Sickles came to the dinner table, but ate nothing. Then went upstairs, and sent for something to eat. Had noticed a change in his manner ever since the Thursday preceding, when he came from the Capitol. Was at Willard's hop. Mr. Key was with Mrs. Sickles the first part of the evening. Mr. Sickles came afterwards, there not having been room in the carriage. She was then with Mr. Wikoff. After we returned from the hop I noticed a change in his manner. The change was more particularly observable on Friday. Mr. Sickles had a very wild, distracted look, especially on Saturday. I read some time in my bedroom, and then went to Mrs. Sickles' room, where I saw her writing. After finishing, she asked me to sign my name to the paper, which I did. I retired to rest at about half-past eleven or twelve o'clock. Mrs. Sickles passed the night in the same room I did. She sat on the floor, her head leaning on a chair. I went to sleep. Saw Mr. Sickles the next morning, at about half-past eight. He did not eat with me. I breakfasted alone. I have not words to express his exhibition of grief. He

was very much agitated. While sitting at the breakfast table I heard sobbing. He was going upstairs. I could hear him all over the house. He uttered fearful groans. They seemed to come from his very feet. They were unearthly, and continued for some time. He was on the bed, with Mr. Butterworth by his side, when I last saw him, on Sunday.

*Cross-examined.* Spent much time at the house of Mrs. Sickles. Sometimes stayed over night. At times I would be out with her, and then go home with her and stay over night. On the Thursday before Mr. Key's death, I went there to a dinner party, and from the Thursday before Mr. Key's death till the Tuesday after, I stayed there. No one but myself and servants were there. Miss Campbell came to see Mrs. Sickles for a few moments. Always found Mrs. Sickles at home when I went there. Sometimes two or three days would elapse before I would visit Mrs. Sickles, and she would call to see me. Don't know that Mrs. Sickles was away any portion of the month of January.

*Bridget Duffy* (recalled). After I signed the paper on Saturday night, Mr. Sickles remained in his room. Saw him on Sunday when I went to take Laura to dress. She slept in her father's bed. Had previously heard him crying and sobbing. I did not see him again till after I returned from nine and a half

o'clock church. Before eleven I went upstairs to make up Mr. Sickles' room, when I saw him come into the room crying aloud, his hands tearing his hair, and in a state of distraction. He called on God to witness his troubles, and cried and sobbed. Mr. Butterworth came upstairs and asked where Mr. Sickles was. The last time I saw Mr. Sickles before I heard of Key's death, was on the stairs, doing something as though he was washing his hands. The last time I saw Mr. Key he was coming from church. I was at the kitchen window when he passed the house on the opposite side; saw him take out a handkerchief and wave it as he passed three or four times. He was outside the park, on the sidewalk, with a lady and gentleman. Do not know exactly where Mr. Sickles then was, but he was in the house, as was also Mrs. Sickles.

*Cross-examined.* Mr. Key whirled his handkerchief round three or four times; did not see any object at which he was whirling his handkerchief. I saw the dog that belonged to Mr. Sickles cross over and fawn upon him, and then pass the house; Mr. Key, when the dog fawned, waved his handkerchief, and also after the dog had left him.

Saw Mr. Key as if parting from the lady and gentleman and going through the park towards the Club House; never saw him after that, he was on the nearest walk to the railing on Pennsylvania avenue, and I lost sight of him near the Club House. Went upstairs immediately after I lost sight of Mr. Key, and in going up, met Mr. Sickles, he was in

the act of wiping his hands, met him near the bottom of the stairs, he had nothing in his hand but a towel; could not describe his dress. Mr. Wooldridge was in the study. Did not notice whether Mr. Sickles was sobbing and crying when I saw him wiping his hands, there was nothing particular in his appearance to attract my attention; do not know whether Mr. Sickles had any breakfast that morning.

Did not hear the pistol shots. Heard of Mr. Key being shot from Mr. Ridgley's girl immediately after it. Did not see Mr. Sickles leave the house. Saw a crowd of people come, and saw Mr. Sickles go out of the study. There were three or four gentlemen and officers with him. Mr. Sickles seemed very much excited. Do not say that he was shedding tears. Cannot say that I heard sobs and exclamations from him then.

To Mr. Brady. When Mr. Key was passing the house he turned his eyes on all occasions to the house. The dog is a little Italian greyhound, called Dandy. The dog was usually kept in the house. Dog knew Mr. Key and fawned upon him.

Wm. W. Mann. Reside in Buffalo, N. Y.; am a lawyer; was in Washington the day of Mr. Key's decease; knew Mr. Key; was not intimate with him; it was merely a passing acquaintance; saw him that Sunday not far from two o'clock in the square opposite the President's house, where the Jackson monument is. Saw him whirling a handkerchief as he went along; he had the handkerchief first in his two hands, this way, and he drew it out and waved it so (il-

illustrating, backwards and forwards).

*April 14.*

*George B. Wooldridge.* Reside in Magoff Valley, N. Y.; on the 27th of February last I resided in Washington; was a clerk under the Clerk of the House; on Saturday, the 26th of February, saw Mr. Sickles that afternoon between four and five at the Capitol; he appeared different from what he had been the day before. He was very much affected and distressed. Saw him the next morning at about ten in the library of his own house. His eyes were bloodshot and red. Told me he had sent for me to come there. His face denoted that he had been weeping. Remained in the house till all the strangers had left it. In the afternoon he acted like a man in great sorrow and distress. So much so that I watched for his coming and going constantly. There was a strange manner about him. He would go upstairs and then come downstairs again. Then he would talk about matters and go upstairs again. Every time he came into the room where I was, he pressed his hands to his temples, and would go over to the secretary and sob. He appeared as if he was in great distress. Every time these fits came upon him he would clasp his temples and lean over this way (illustrating it). He would sob and cry so much that I told him to give vent to his tears, as they would relieve him. He would raise his hands and exclaim. Sometimes these fits would take

him before he could get to the secretary, where he went to hide himself, and then he would bow down his head as if his stomach was giving way, and he would be hardly able to reach the secretary for support. Saw Mr. Key that Sunday. The first time between ten and eleven going out of the gate of Lafayette square on the street Mr. Sickles' house is in. The second time about a quarter to two, directly in front of the library window of Mr. Sickles' house. There was a lady and gentleman with him. Mr. Sickles was upstairs at that time. He had left the library and gone upstairs. I saw Key take a handkerchief and wave it three times; while doing so his eyes were towards the upper window of Mr. Sickles' house; he kept his eyes from the gentleman, as he did not wish him to see what he was doing; he parted with the lady and gentleman at the corner, entered the park and proceeded in direction of Madison place; some five minutes before that Mr. Sickles had gone upstairs; saw him enter the library door; two minutes after heard some one coming down stairs very rapidly and come into the library; he said: "That villain has just passed my house." He was very excited, and talked for a moment with Mr. Butterworth, who endeavored to calm him; he threw Mr. Butterworth off, and turned into the hall; he had not his hat on at that time; that is the last I saw of him until he came into the house with the police officers.

*Mr. Brady.* When you saw him at the Capitol on Saturday did he make any communication to you at the time?

*Mr. Ould* objected. It was proposed not only to prove the nature of the communication, but that the entire subject matter should be given in evidence to the jury in connection with the excited state of the prisoner's mind. Insanity is a fact distinctly capable of proof. If the communication is offered in evidence to show the insanity of the prisoner, it is uncertain, and leads to no fixed and sure conclusion. Whatever the nature of the communication, it does not follow as a matter of course and reason that insanity necessarily or probably took place. It does not rise to the dignity of secondary evidence. The only proper evidence would be a manifestation of the mental disease given by the prisoner either at the time the communication was made, or subsequently up to the commission of the homicide. The question was, whether this evidence could be given for any other purpose than to show a state of mental disease on the part of the prisoner at the bar. Could it in any sense be offered for the purpose of satisfying the Court and jury that there was provocation of any kind?—that the prisoner was entirely and properly under the influence of a heated or excited mind, which inflamed it to anger, or drove him to revenge? Could it be offered for any such purpose as that? All the authorities clearly show that it was incompetent for any such purpose. Even adultery does not offer an excuse or a justification, unless the husband catches his wife in the act. Then the offense is reduced from murder to manslaughter.

*Mr. Brady.* My learned opponent may argue on adultery as long as his convenience, taste or judgment might permit. We are quite as well prepared as the learned and eminent counsel—for they are both eminent—may be. We do not propose to discuss any such question now. I thought I had given my friend a distinct understanding to that effect.

*Mr. Ould* was aware of that; but it necessarily shut out the evidence it was now proposed to offer. He understood the proposition of the defense to be this: That on Saturday a certain communication, connected with the adulterous intercourse with the prisoner's wife, was made to the prisoner at the bar, which threw him into such a state of mind as demonstrated insanity, or a state of excitement which had some relation to insanity or rage or frenzy. Evidence which stops short of insanity is inadmissible. If insane, the prisoner could not be made to suffer. In *State v. John*, 8 Iredell's, the prisoner's counsel insisted that a knowledge or belief of adulterous intercourse mitigated the crime from murder to manslaughter. The Court rejected the evidence. The counsel then offered to prove, not that the deceased was found in the fact of adultery at the time the homicide was committed, but that adulterous intercourse had at some time occurred between the parties; and as he had before said, the counsel insisted that a knowledge, or even such belief by prisoner, would mitigate the crime from murder to manslaughter. All the authorities—Hale, Foster, East, Russel, Blackstone, etc., are against the course now proposed. To extenuate the offense, the husband must find the deceased in the act of adultery with his wife. The proposition was that such evidence was

competent to be offered, because, if the jury believed the evidence, they could reduce the offense from murder to manslaughter. The decision was against this; for, if the evidence fell short of showing that the parties were caught in the fact, it was incompetent for any such purpose. Was not this identically the same case? It was merely proposed to offer a certain statement made by the witness to the prisoner at the bar not under the solemnity of an oath.

*Mr. Stanton.* The evidence offered presented one proposition entirely different from that argued by the public prosecutor. At the moment of the act of homicide the prisoner declared that the deceased had violated his bed. On the previous day he is found terribly excited. To a clergyman of this city, who met him the same evening, he appeared defiant and desolate; and in the same condition he is traced down to the moment of the homicide and afterwards.

The defense here proposed to prove, as partly accounting for this condition, that a certain communication was made to the prisoner. The public prosecutor objects to that, and, following the argument of his associate yesterday, intimates that there are two classes of men on whom that communication would produce insanity. Who was to be the judge of that? Not the Court, but the jury. They are to determine as to how this communication would act on the reason of the prisoner. The public prosecutor had, however, undertaken to argue that the offense of slaying an adulterer cannot be reduced from murder to manslaughter, unless the husband had ocular demonstration of the fact. He denied that that was law; he denied that it had ever been so decided, and he denied, in the name of humanity, that it would ever be so decided. Counsel wanted it understood and held in mind that, although the prisoner at the time of the homicide declared that the deceased had dishonored his bed, yet the correspondence between the prisoner and deceased in reference to prisoner's wife, had been excluded. But yet counsel did not complain of that ruling.

So, too, a communication from the wife to the husband, which was enough to induce the husband to sacrifice, not one life, but a whole hectacomb of lives, was excluded; and here a communication from a third party, of a character to affect the prisoner, is offered to be proved, and the prosecution object. The case cited by the public prosecutor in 8 Iredell's (N. C.) Reports was the case of a slave wife. Was it true that the condition of a freeman's wife was the condition of that of a slave? He denied it, and there was not a man within sound of his voice who would not wade knee deep in blood to gainsay such a proposition. If Philip Barton Key had owned a married woman as a slave, he might place a halter around her neck and lead her to the shambles; but could he do so with a free woman?

The prosecution in their thirst for blood, had forgotten the institution of slavery, for the judges had laid down the principle that no civil rights are acquired by a slave on account of marriage.

But the very evidence, in which that North Carolina case was excluded on the point of justification, was admitted on the point of

showing the prisoner's state of mind. That was all they claimed in this case. They only demanded for the prisoner at the bar the same right which is accorded to a North Carolina slave. He would show that never in England, since the time of Charles II., in a case adjudged by Lisdale, one of the most corrupt judges of a corrupt age, had a man been punished for slaying the man who had so desolated his hearth; and now it was to be seen whether that was American law. If it was, his Honor would be the first judge in this country who had held that the man who had slain his wife's adulterer was a murderer, and was not to place in evidence the justification of his act. I will show you, moreover, that never in this land has it been so held; that never on the civilized earth has it been so held; that never, by any judicial tribunal anywhere, has it been so held. When that question comes up I shall shake hands with this prosecution and meet them upon it here.

Your Honor, you have to say whether this evidence is to be shut against a free man who has vindicated the honor of the marriage relations; if it be, your Honor will be the first to say that a man shall be punished who, under the influence of passions excited by outraged honor, humanity, nature, feeling, has slain the corruptor of his wife, the adulterer, the violator of his bed, and the dishonoror of his home. The counsel then referred to Judge Crawford's ruling in Jarboe's case, and in Day's case, and claimed that those rulings covered the ground here, and authorized the introduction of the evidence proposed. He asked, then, that on these principles the ordinary feelings of humanity should be recognized and the ordinary rules of evidence followed, and that this evidence should not be excluded in order that vengeance might obtain the blood of this prisoner, who was so fiercely hunted.

*Mr. Ould.* Counsel for the defense had insinuated that the public prosecutor was actuated by thirst for blood, and that he hunted down the prisoner for vengeance.

*Mr. Stanton* disclaimed making such charge.

*Mr. Ould.* He could let his argument and conduct go before the Court and the world in contrast with the disreputable rant which this counsel had exhibited. There was no place where gentlemanly feelings could be better shown than in a forensic contest of this nature, and so there was no place where vulgarity and rudeness could be better exhibited. There seemed to be divisions assigned to counsel for defense—to some, high tragedy; to some, comedy; to some, the part of walking gentlemen; and one gentleman appeared to fill the office of clerical supe, to set the theological part of the house in order. One of the counsel had carried out the part, whether assigned to him or not, of the bully and the bruiser. No one had a greater dislike to personal antipathies and personal controversies than himself—no one an intenser scorn of the person who gets them up or of the method in which they are got up. He stood here under the solemn responsibility of his oath and had endeavored to discharge his duty faithfully as a public prosecutor. He had not now, nor never had a prejudice or ill-feeling against

the prisoner at the bar. If, however, he believed that that prisoner at the bar had imbued his hands in a fellow-creature's blood, he would not restrain from declaring it. He should not call murder gentleness, or malice good feeling. He had only risen now for the purpose of relieving himself from an aspersion which had been wantonly, and he believed vindictively, made against him. The exigencies of this case, perhaps, had demanded that before this he should have vindicated himself from the aspersions made against him in the course of the case. He was glad of having the opportunity of doing so now.

*Mr. Stanton.* I know my duty to my client, to the cause, to society, to myself, too well to allow myself to be drawn aside by any such personal considerations. I am not to be drawn from the principle of law by any such resort of the counsel for the prosecution. I will leave his course to be judged of by the whole world. If his course is justified by his being public prosecutor, be it so. I say the law he presents here is not adapted to our state or society. I say the law, on the principle on which he claims it, would lead my client to the gallows by those who are malignantly seeking for his blood. I have not the honor of his acquaintance, and, after his language just uttered, do not desire it. Such law as that insisted on would conduct his client to the foot of the gallows, and there were private prosecutors here. I cannot reply to the counsel's remarks. I defy them. I scorn them. I don't fear them.

*Mr. Carlisle* addressed himself simply and briefly to the question of law pending. I am at a loss to know on what distinct ground this evidence was offered.

*Mr. Stanton.* It is offered to account for the state of mind in which the prisoner was shown to be.

*Mr. Carlisle* would then inquire whether it was admissible? It was not competent to prove insanity by the declarations or communications of other parties, but by the acts and declarations of the prisoner himself. If any of the progressistas of the law could show that any other principle had ever obtained, he should like to have the case pointed out to him. Whatever communication this witness, like Iago, poured into the ear of his friend—if he might be permitted to refer to a play which seemed to be special property of his friends on the other side—was not important—the effect which that communication produced on the prisoner's mind was the only thing that was important. As to the acts and declarations of the prisoner himself, the widest latitude had been given to paint his state of mind through the descriptions given by the witness for the defense. Counsel referred to the case of the State against John, 8 Iredell. He was much surprised that the counsel, who had admonished him the other day not to introduce slavery into this matter, had undertaken to denounce that decision because it was made for slaves and the wives of slaves, not for freemen, or the wives of freemen. They knew that no distinction was made in the rules of evidence as between slaves and freemen.

*Mr. Carlisle.* At the same time, the natural relations between the



slave husband and wife are recognized. Whoever else might have expected to be affected by the denunciation of the law made for a slave man as applied to a free man, his Honor would not be affected by it. He knew how much it was worth. In that case of John, the court said that not only the evidence was inadmissible on the point of reducing the offense from murder to manslaughter, but that there was the plainest implication that it was not admissible on the point of insanity. In that case the offer was not to prove that the prisoner had been informed that the adultery had taken place, but the offer was to prove that adultery itself, and the evidence was rejected. A bill of exceptions was taken, and the Court of Appeals decided that no evidence which the prisoner was entitled to introduce was rejected. How could they say so, if the fact of the adultery having been committed could affect the sanity or insanity of the prisoner? Do gentlemen mean to say that, if the evidence was immaterial, either in point of justification or in point of insanity, the Court of Appeals would not have declared it admissible? It was the duty of the Judge, if he sees that the evidence, susceptible of having any operation on the defense, had been rejected, to remand the case, and order the evidence to be admitted. North Carolina, however, was not so fast a State as New York, but the rules of law there had a soundness of foundation which he confessed he liked. The judges there had not arrived at the point of admitting evidence, not that a man was mad, but that he ought to have been mad. That was the point here. Gentlemen might use all their ingenuity, but they could not escape this precise issue, "was the prisoner insane?" not "ought he to have been insane." If the effect was shown, *qui bono*, investigate whether there had been sufficient cause to set him mad. Let them prove, if his Honor thought it material, not that the prisoner had been informed of a certain state of facts, but that the facts did really exist.

*Mr. Stanton.* As the relations of counsel to slavery had been referred to, I would state here that I have the blood of slaveholding parents in my veins; my father had been a North Carolinian and my mother a Virginian.

*Mr. Carlisle.* That is an interesting fact, which I hope will be chronicled like all other things that take place here, so that when the gentleman comes to have his biography written, that fact may be mentioned in connection with the doctrine which he has expressed and maintained in this case.

*Mr. Stanton.* The doctrines which I have maintained here in defense of homes and families will be the proudest legacy I will leave to my children.

*Mr. Carlisle.* No doubt of it; no person can doubt the earnestness of the gentleman as to his doctrines; but unless the earnestness and fire with which these conclusions are announced are to be taken as indications of their soundness, I shall beg leave to consider them as opinions and declarations in themselves. Of the manner and vehicle in which they are brought to notice, I do not agree with the gentleman, and I am sure he does not expect me to agree with him.

*Mr. Stanton.* Certainly not; I appeal to the hearts of other men.

*Mr. Carlisle.* There are a great variety of human hearts in this world.

*Mr. Stanton.* Yes, sir; and some of them very bad ones.

*Mr. Carlisle.* And I am happy to say that mine does not contain many things which seem to exist in the hearts of some other people, though like all other human hearts, I suppose it is filled with much that would be better out of it.

*Mr. Stanton.* It would be better were something else in it.

The JUDGE. Really, gentlemen, this thing must be interrupted.

*Mr. Carlisle.* I am addressing myself to your Honor, and I shall say no more about this, because I really feel quite indifferent to the observations made, and shall take no further note of them.

The JUDGE. The proposition, as I understand it, is to receive the evidence of a communication made by the witness on the stand to the prisoner, to prove, or to aid in proving, the insanity of the prisoner at the time of the commission of the offense. That is the distinct and single ground on which the prosecution is now put.

I wish that to be marked, because my opinion might vary in particular aspects, and I do not want to commit myself more than is necessary.

*Mr. Stanton.* That is the precise point we occupy.

The JUDGE. I think this evidence offered as a link in the chain to prove insanity is not receivable. The jury are to judge how far insanity exists, strengthened by evidence of acts, such as usually characterize derangement of mind, if proved; but the communications of A. B. to the prisoner, or any number of persons offered in regard to insanity, cannot, I think, go to the jury.

*Mr. Stanton.* Will your Honor be good enough to explain a little further, so that we can understand how to meet your Honor's views on that point. Your Honor says it cannot be admitted on the point of insanity.

The JUDGE. As tending to produce insanity, or as a cause that would probably induce insanity.

*Mr. Stanton.* But if coupled with evidence of insane acts, what then? All that we desire is to get in evidence that will save the prisoner's life. Of course the jury are to be the ultimate determiners of the facts. If there be any view in which we can get it in, we would be glad to be informed of it by the Court.

The JUDGE. I go no further than to give this particular opinion, because I foresee that there will be a great many discussions on this point, and I do not choose to commit myself incidentally.

*Mr. Stanton.* Can your Honor suppose any given state of facts, which connected with this proof, would render it admissible?

The JUDGE. I will not touch that.

*Mr. Stanton.* Then your Honor will allow us to go on and find it out.

The JUDGE. Whenever you reach a stage where you think any particular piece of evidence is admissible, you can offer it, and the Court will decide it.

*Mr. Stanton.* Your Honor will recollect that we are trying to get in evidence to save the prisoner's life.

*Mr. Brady.* In order to prevent it being said hereafter that the change of Mr. Sickles' mind on Saturday was produced by a communication referring to some subject other than that which was in point of fact made, we offer it in a distinct form, to prove this: that this witness had communicated to Mr. Sickles that on the Thursday (the 23rd of February) preceding the decease of Mr. Key, Mr. Key had gone with Mrs. Sickles to a house in Fifteenth street, in Washington, which was hired by Mr. Key for the exclusive purpose of having there adulterous intercourses with her; that Mr. Sickles having investigated that statement, made by Mr. Wooldridge, ascertained that Mrs. Sickles had not been there on Thursday, but had been there on Wednesday with Mr. Key, and they were seen by the whole neighborhood; and that it was the revelations by Mr. Wooldridge to Mr. Sickles of the fact that he had made a mistake in the day, that removed from the mind of Mr. Sickles the presumption that his wife was innocent, and produced the conviction that she was guilty.

*Mr. Wooldridge* was set aside, to be hereafter cross-examined.

<i>John Cuyler.</i> Knew the late	Saw Mr. Key in the vicinity of
Mr. Key for three or four years.	the house the week before his
Knew where Mr. Sickles resided.	death.

*Mr. Carlisle* said that, having been informed that the counsel on the other side intended to interrogate the witness about the handkerchief, the counsel for the United States objected to the question. They did not see its relevancy, either on the question of provocation or the question of insanity, or any other question arising out of the case.

The COURT. It is now too late to shut the door to that kind of evidence.

*Mr. Carlisle.* This evidence has relation to something which occurred the week before the event.

*Mr. Brady.* We want to know whether Mr. Key waved the handkerchief to excite the admiration of the dog or anything else.

*Mr. Cuyler.* As I entered the corner gate of Lafayette Square, saw Mr. Key enter the center gate proceeding to the front of the Jackson statue. He took a seat on the iron bench, and rested his head on the left hand, then pulled out a pocket handkerchief and waved it. I went behind the statue, and watched him. He waved his handkerchief in this way, and then looked at the house of Mr. Sickles. There was

no dog about at the time. This was between twelve and one. I left him sitting there. I have often seen him loitering back and forth in the square. For two months he had been attracting my attention; never saw him waving his handkerchief but on one occasion.

*Mr. Stanton.* Was that when the members of Congress were at the Capitol? Yes.

The COURT. The inquiry

whether that was before or after Congress was in session is not proper.

*Mr. Stanton.* Congress met about eleven o'clock. I think it is important as to the time. The signals must have been made when Mr. Sickles was out of his house.

*The Court.* I can clearly see what you mean by it.

*To Mr. Ould.* Saw Mr. Key waving his handkerchief while I was going home to dinner; never took count of how many times I saw Mr. Key in the square.

*Jeremiah Boyd.* Have known Mr. Key four or five years; saw him on the Sunday of his decease, half-past ten, at the Treasury building; he walked on before me; went to Mr. Pyne's church; coming from the church saw Mr. Key on the pavement, near the Club House, his face toward Lafayette square, looking toward the house of Mr. Sickles; since then I have been at the place and could see the house from there.

*Cross-examined.* Mr. Key had his head up looking towards the house; he was turning his head about as if looking out; this was about one o'clock. His back was to the Club House.

*A. Young.* Knew Mr. Key; saw him on Sunday, immediately after breakfast, between nine and twelve; he was opposite the President's house on the avenue, going up toward Georgetown.

*Charles G. Bacon.* Saw Mr. Key on 23rd February, the Wednesday preceding his death between ten and eleven o'clock at the middle gate of Lafayette square; he went near the statue; took out his handkerchief, and twirled it two or three times; he

gathered it in a clump so (illustrating) and let it fall out in this way; some hours after saw him walking with Mrs. Sickles, Miss Ridgeley and a gentleman; this was between three and four o'clock; had seen him wave his handkerchief between the 14th and 17th of February; he was opposite the house of Mr. Sickles, he waved his handkerchief two or three times; have seen him on the President's side of the avenue near the west gate, at the cross-walk leading to Mr. Sickles' house, waving his handkerchief; he seemed to clasp his handkerchief, let it fall, clasp it again, and catch it before it could fall any distance.

*S. S. Parker.* Have seen Mr. Key in the vicinity of Mr. Sickles' house; the last time on the Sunday he was killed near half-past one. Saw him the Sunday before the shooting; saw Mrs. Sickles on the platform of her residence, her hand over the shoulder of a little girl, apparently trying to keep her from falling over the steps; directly after I saw Mr. Key at the southwest gate of Lafayette square; when he came out in full view, he took out his handkerchief with hat in hand, put his hat on his head, bowed to Mrs. Sickles and twice waved his handkerchief.

*To Mr. Ould.* Never saw Mr. Key use his handkerchief in that manner before.

*Wm. Ratley.* Have known Mr. Key by sight for two or three years; last saw him two or three days before he was shot on the avenue between Seventeenth and Eighteenth. The Thursday preceding his death, saw him in front of Green's, the cabinetmaker's, with a letter in his hand;

Mrs. Sickles and the child were with him; she left him and went into the shop, and when she came out they walked together up the avenue, he reading the letter. Mr. Wilson was with me, and he crossed the avenue and said he wanted to get a good look at them.

*Frederick Wilson.* Am the person referred to by the last witness; saw Mr. Key, Mrs. Sickles and the little girl coming up the avenue. They came up to Green's furniture store. Mrs. Sickles and the little girl went into the store. Mr. Key stood outside reading the letter. In about fifteen minutes afterward they came back on the south side; just as they passed me he put the letter in the envelope and they walked down the avenue. It was a yellow envelope something like this. (The envelope covering the anonymous letter to Mr. Sickles.) Have seen Mr. Key prowling about the house of Mr. Sickles a great number of times; nearly every day between the hours of twelve and one I usually found him there; it appeared to be quite a regular business. The Saturday three weeks before the death of Mr. Key, was the last time I saw the handkerchief waved.

*Thomas J. Brown.* Reside in the city of New York; in pursuance of instructions from you (Brady) I obtained a certain lock. Mr. Brady hands the witness a sealed package, the witness breaks the seal, opens the package and produces a common door lock. I got this from Mr. Wagner, who took it from the door of 383 Fifteenth street.

*Jacob Wagner.* Am a locksmith; delivered this lock to Mr.

Brown, the last witness; took it off a house in Fifteenth street, No. 383, John Gray, the black man's house; there were three or four gentlemen there when I took it off; Mr. Pendleton was one of them; this was about a week after Mr. Key's death; the colored man paid me for taking it off.

*April 15.*

*John M. Seeley.* Am a painter; reside on L street, below the corner of Fifteenth. The immediate connection between the back gates of my house and that of 383 Fifteenth street, is about forty-five feet apart; witnessed the taking off of the lock. Saw opening of the back door, and heard the order given to take the lock off the front door, because, as I thought, the key had been lost. Mr. Chas. Lee Jones and Mr. Pendleton were present. A gentleman named Poole went with me into the back yard. I heard nothing of the character of the new lock.

To Mr. Ould. That was the first time I had been in that house after Mr. Key's death, it was between the 5th and 8th of March, the locksmith got into the yard through the lot of a yellow woman; do not know of my own knowledge, only from rumor, that any other parties had been there after Mr. Key's death.

*Louis Poole.* Lived, in February last, on L street, between Fifteenth and Sixteenth streets, in the house of the last witness; know the brick house, 383 Fifteenth street, and was present when the lock was taken off, the Monday or Thursday week following the death of Mr. Key. Messrs. Pendleton, Jones, Seeley, the colored man and myself were

present; Mr. Pendleton ordered the old lock to be taken from the door and replaced by a new one.

*Rev. C. H. A. Bulkley.* Am a clergyman, and reside in West-minster, Conn.; have known Mr. Sickles since 1838; we were associated together in the New York University; our pursuits being since that time diverse, we have not cultivated an acquaintance, but we have recognized each other as we met. In the year 1840, on the death of Professor Da Ponte in New York; he was a kind of patron and guardian of Mr. Sickles, or, rather, I might say, that Mr. Sickles was regarded by us students as his protegee—as one in whom Da Ponte took a special interest with regard to his education; in the cemetery where Professor Da Ponte was buried, immediately after the body was lowered into the ground, Mr. Sickles broke out into a spasm of passionate grief and most frantic energy; he raved, and tore up and down the graveyard shrieking, and I might even say yelling, so much so that it was impossible for us who were his friends to mollify him in any measure by words; we were obliged to take hold of him, and by friendly force restrain him, and thus ultimately we took him out of the cemetery; the demonstration that he made might be called one of frantic grief. The impression I have is that he tore his clothes and his hair.

We were both about the same age. I am now forty. I cannot say how long this frantic grief lasted—somewhere between five and ten minutes. Saw no trace of it the day following; two or three days afterward he

appeared to be rather light-hearted and apparently too much so under the circumstances. His light heartedness seemed unnatural in contrast with the grief he had exhibited two days before.

To *Mr. Brady.* As to this exhibition of levity, I have stated that it struck me as unnatural in contrast with the remarkable exhibition he had made two days before—so that the inference on my mind was that he was subject to very sudden emotions. We were apprehensive of some further violence to himself, and that his mind would entirely give way.

*Jesse B. Haw.* Knew Mr. Key. The last time I saw him was the morning of the day he was shot, between ten and twelve o'clock, in Lafayette square. Saw him come out of the west gate. He went towards Georgetown. I lost sight of him as he passed. I did not notice him looking at anything; was with Mr. Young at the time, but did not see Mr. Key use his handkerchief.

*Major Hopkins.* Am a coachman for Col. Freeman; his house is between Fifteenth and Sixteenth streets, on H street; the last time I saw Mr. Key was Sunday morning; he was shot about half-past one; was standing at Freeman's gate. I saw Mr. Key in the middle of Lafayette square, walking back and forth two or three times to the Jackson statue. I did not see him do anything particular at that time; saw him on the Monday or Wednesday before the shooting. He walked past me five or six times; saw him wave his handkerchief five or six times. Mrs. Sickles came out

and joined him on the corner of H street and Madison place. I saw them go up Fifteenth street, and lost sight of them on the steps of John Gray's house.

*Mr. Carlisle.* As a matter of curiosity, is Major your Christian name or title? My name.

*Mr. Carlisle.* That explains why the Major drives the Col-

onel's carriage—you don't belong to the army or militia.

*Mrs. Nancy Brown.* My husband is the President's gardener; knew Mr. Key; saw him the Wednesday before he was shot going into a house on Fifteenth street, the next but one to where I live.

*Mr. Carlisle* supposed there must be some point of time when his Honor would hear and determine the question about this house of John Gray's. They were sliding along in the direction of giving evidence of adultery. He desired to know and to have it determined whether his Honor meant to admit as competent evidence facts tending to show previous adultery on the part of deceased with the prisoner's wife? They were getting along, point by point, towards that subject, and if they did not make an objection now, he did not know when they should make it. If his Honor thought the evidence should be admitted, no objection could or would be offered on the part of the prosecution. But they would have evidence to offer on the same subject. He asked whether this was or was not a link in the chain of evidence bearing on adultery? If so, it was the duty of the prosecution to present the question to the Court.

*Mr. Brady.* We insist that Mr. Key was killed in an act of adultery, within the meaning of the law, and that that was proved within the testimony of the prosecution. We offered this evidence—first, to prove an adulterous intercourse and connection carried on between Mr. Key and Mrs. Sickles by a standing agreement between them, dating further back than the hiring of this house in Fifteenth street, and connected with the hiring and furnishing of that house; and they would claim that where an adulterer hires a house and takes to it the wife of another man, daily or weekly, or whenever he could get her to go there, that was a case of habitual adultery. In other words, they said that when a man and woman go habitually to a house for the purpose of adultery, they are living in adultery all the time; and it was not necessary for the husband to wait for the disgusting exhibition of his own dishonor, to slay the gorged and satiated and brutal adulterer; that was one aspect of this case. They had proved that Mr. Key was frequently seen before the house of Mr. Sickles, waving a white handkerchief, and no one could look on any part of this case without seeing this tainted banner floating in the atmosphere, which was corrupted by the presence of that brutal adultery.

They had shown that with that banner in his hand, and with the Key of that house of prostitution in his pocket, the deceased was hovering around the house of Mr. Sickles when the outraged husband met and slew him. He supposed that, having proved the matter of the signal, they could show the purpose for which that house

in Fifteenth street was kept; and he held that, in point of law and in point of reason, the deceased was killed in the act. They would offer this evidence, too, on the point of insanity, supporting it on the rulings in the case of Day and Jarboe.

They offered to prove, first, that just before Mr. Sickles left his house and home, on the 27th of February, and shortly before he met Mr. Key, the latter had used his handkerchief in front of said house as a signal to Mrs. S. to leave the house and join him, to proceed to said house in Fifteenth street, and there have adulterous intercourse with said Key, and that Mr. Sickles saw the said Key use the said handkerchief, and knew what was the meaning of such use, as is above stated; that Key hired a house in Fifteenth street, in the city of Washington, for the exclusive purpose of committing adultery therein with Mrs. Sickles; that the key of such house was found on the person of the deceased after his death, and was one of those which have been produced on this trial; that Mr. Sickles knew of the aforesaid design, intent and preparation of this same key; that at the time Mr. Sickles met Key on the 27th of February at the corner of Madison avenue, and just before he was shot, Key was on his way to the home and house of Mrs. Sickles, with the unlawful and wicked design to cause and procure her to leave said house and proceed with him to the aforesaid house on Fifteenth street, and then and there to have adulterous connection with him, the said Key then having the key of the front door lock of said house in his possession, to be used in procuring admittance; that Mr. Key was in the habit of exhibiting and using his handkerchief before Mr. Sickles' house and home as a signal, on perceiving which she was to leave said house and proceed to the house in Fifteenth street, and there have adulterous connection with Mr. Key, and that she had done so in pursuance of such signal; all which said facts had shortly before the meeting between Mr. Key and Mr. Sickles on the 27th of February, come to the knowledge of said Sickles, and that said Sickles, immediately before the killing, had himself seen the said Key using his handkerchief before the residence of said Sickles, for the adulterous purpose aforesaid.

The JUDGE. As I understand this proposition, it brings up the question of admission of proof of adulterous intercourse.

*Mr. Brady.* For any purpose?

The JUDGE. Yes, for any purpose that opens the whole question.

*Mr. Carlisle.* I think so.

*Mr. Carlisle* regarded the question as one of exceeding importance to the administration of justice generally. The consequences of his Honor's opinion must stretch far beyond the issues of this particular case. His Honor had offered to him an opportunity of establishing a new era in the administration of justice in cases of homicide, and he was invited, instead of resting on the *antiquas vias* of the law, to follow the ingenuity of counsel into new and devious paths. The counsel on the other side would argue that they were only asking his Honor to apply old principles to a new case, if they



could succeed in showing that he (Carlisle) would not be disposed to cavil at or object to such determination by the Court.

He had already in an argument somewhat akin to this, had occasion to express to the Court the views of the law which the prosecution here entertained, and he was compelled to wait and hear the arguments and the doctrines which were to him unknown and unimaginable by which the learned counsel on the other side hoped to satisfy his Honor that the plain rule laid down in all text books and adjudicated in all cases of which there are records, was not the rule of this case.

It would offend his Honor to refer to the textwriters, and prove that to reduce the grade of the offense from murder to manslaughter, because an act of adultery by deceased with the prisoner's wife; that the adultery must be an actual and not an imaginary or figurative one; that it must be one in the eyes of the husband; that the killing under that provocation must be an immediate killing; and that the subsequent killing is one on the principle of revenge, and is murder. The case in Iredell, to which he referred yesterday, recapitulated the law, and laid it down as the existing law of the land. The learned Judge there said, that with that law all existing authorities concurred. The same law is laid down in the American treatise on the subject.

We would refer his Honor to Wharton on Homicide, page 179, where it is said that, however great the provocation may have been, if time had elapsed for passion to subside, the killing is murder; and that in the case of adultery where there has been cooling time, the provocation will not avail in alleviation of guilt.

In Queen against Fisher (8 C. & P.) a father found that his son had been reduced to an unutterable condition of crime and disgrace by the party whose life he took. There, too, the act itself was a capital crime, punishable under the law of the land by death. For that father to have brought the man to justice would have been to have brought his own son to the gallows. To be sure, that father had not been described as in any paroxysms of grief; but counsel had yet to learn that grief would not corrode the heart as surely, when silently gnawing at it.

Under this provocation, the father, when he met the offender, slew him. Mr. Justice Parke, in summing up that case, said that there would be exceedingly wild work taking place in the world if every man were allowed to be the judge of his own wrongs; that there must be an instant provocation to justify a verdict of manslaughter in all cases; the party must see the act done. He therefore held that, as the father in this case had not seen the act done, there was nothing to reduce the crime from murder to manslaughter.

*Mr. Brady.* There was only a conviction of manslaughter there.

*Mr. Carlisle.* That is true. The charge of the Judge is reported on the question of provocation, and on that question alone the facts of the case showed that there was a scuffle between the parties, and counsel could well comprehend how any jury, called to pass on the life of that father, would do as the jury had done in the case of

Jarboe, stand on tiptoe to find a reasonable doubt of the prisoner's guilt.

Counsel would never forget that case of Jarboe, and if that case were relied on by the counsel on the other side for a precedent for throwing open the gates of society to every species of violence, when that violence was set in motion by the natural feelings of the heart, they were mistaken.

For one, as a humble member of this community, as one who expected his bones to rest on this soil, and the bones of his children, and his children's children to rest in the same hallowed soil, he should deplore that he had been spared to live to see the day that such a doctrine should be proclaimed by the authority which resides in the jury box. But even if the Jarboe case established such an evil precedent, he had that confidence in the good and lawful men of this community, that he did not believe that any precedent would lead astray a jury of this county.

In the case of Jarboe, it appeared in evidence that the prisoner and his young sister, who had fallen into the arms of an infamous seducer, when they were walking in the street together met the deceased, and that the brother asked him civilly and quietly, "What do you mean to do about my sister?" The answer was brutal in the extreme; and it further appeared that on the instant of death the deceased had drawn from his person a loaded weapon, which fell at his feet. Under these circumstances the counsel appealed, and rightly appealed to the jury to give the prisoner the benefit of the doubt in reference to the deceased having first drawn a pistol upon the prisoner. That was not this case.

The case of the People against John, reported in Iredell, was a direct case of adultery, where the husband found the deceased lying on a bed, and his wife in the room with him, and instantly killed him. And there the adultery was not allowed to be proved in justification. We have yet to hear any argument against the authority of that case, except that the party was a slave. We also refer to *Queen v. Kelly*, reported in Carrington and Paine.

*Mr. Brady.* That is the case where a man shot his mistress on mere suspicion.

*Mr. Carlisle.* It is. I do not intend to compare the facts with the facts of this case, but read it merely for the law, as it is laid down in it. That was a modern case—a case long subsequent to the time when the benefit of clergy (the burning in the hand) was abolished.

Whatever there be disgusting or repugnant in the proposition that the husband must catch the adulterer in the act to entitle him to set it up in mitigation of the offense, it is the proposition of the law, and not of this prosecution. Painful and disgusting as the law might be unhappily for those who offend it, it must be submitted to.

Counsel for the defense say they propose to show habitual adultery; that the prisoner saw the adultery with his mind's eye; that

the proof had thickened upon him, until he was forced to believe it. Granted all this for the purpose of this argument; granted that he had sat in judgment, and heard the parties, both of them, and had pronounced a true judgment that they were guilty, did that make the case laid down in the text books of an adulterer found by the husband in the very act? Why, no, sir. And yet the doctrine here was not that that knowledge of adultery reduced the crime from the grade of murder to that of manslaughter, for that is scouted, but that it justified the murder.

According to this doctrine, the husband was in a condition for the year during which this adulterous intercourse had continued to kill not only the adulteress but her paramour. This doctrine was entirely new to him, but of course it did not follow from that circumstance that it might not be sound.

We had not the advantage of having the points of evidence, but understood that it was proposed to prove habitual adultery between deceased and the prisoner's wife. If a woman leaves her husband's house and goes to live with her paramour in open adultery, might the injured husband, at any time he thought proper, go and slay that adulterer? He would put that case in the strongest light; if he had the ability of the counsel on the other side he would paint it in the most disgusting terms; but he was "no orator as Brutus is;" it would be new law to him that the husband might, under such circumstances, slay his wife or her paramour; his Honor had never read such a law, and certainly had never enunciated it.

What next was offered? The waving of the flag, the possession of the keys of a house hired for the purpose of prostitution; that the deceased at the moment of the homicide was on his way to the prisoner's house, with the unlawful design of seducing the prisoner's wife out of her house.

What next was offered to be proved? That the prisoner knew the deceased was on his way to the house with the design of inducing his wife to commit an act of adultery with him. Did that knowledge justify murder? Why, not at all. Such a knowledge made his wife a thing to be loathed by him. These are the facts offered in evidence. He might place them under three heads: First, facts tending to show habitual and continued acts of adultery; second, a specific act of adultery; and third, evidence tending to show that the adulterer was about to perpetrate an unspeakable wrong upon the prisoner.

We suppose that no further act of shame could have been then perpetrated upon the prisoner's wife. She had become dead to the prisoner at the bar—worse than dead, infinitely worse. He has not the consolation which her death might have given him. I am not here, and I hope I never shall be in any place, to endeavor to take from him any particle of sympathy which any human heart may extend toward him. Far from it.

In my connection with this case I have not swerved thus far, and I trust my life will not be spared to the end if I do swerve from the spirit of justice, of truth and of Christianity, in respect of every

movement connected with it. But this is the case of a husband who takes pains first to show that his wife was a confirmed adulteress, who would have you believe that when she lay her head upon his trusting bosom night after night, she had come from the embraces of an adulterer; that his wife was one who had stood with their child, the innocent pledge of their mutual love, resting her hands on its head, and who then and there made or received or answered signals from an adulterer; a woman who had polluted his bed, who had made his child motherless, who had filled his cup of shame and bitterness to overflowing. This is his account of it. There seems to be no difference at all in respect of the colors in which the unhappy wife is to be painted. I concede to the prisoner, in the argument I am now making, all that he claims for himself, as one capable of comprehending and fully realizing all the sacred relations of the marriage tie; and I say magnifying him in that respect for the sake of this argument, desiring to say all that can be said for him, to erect him into a pure, upright, virtuous just man; a man of the purest and strongest feelings, and nicest sense of honor; a man capable of being driven to insanity by the discovery of the infidelity of his wife; granting all this to him how does it bear on the proposition of this evidence? Why, they tell us he has tracked this thing from the beginning to the end.

*Mr. Brady.* I beg your pardon; nobody has stated that in my hearing. The proposition is that just before Mr. Sickles left his house that Sunday he had discovered these facts, and had also witnessed the waving of this flag.

*Mr. Carlisle.* I am aware that this offer of evidence embraces no such fact; it would be strange if it did. But I am addressing his Honor on a matter of law; and I am addressing a Judge who has seen and read and determined upon the admissibility of a certain paper which on Saturday night was drawn up in the prisoner's presence, and signed by witnesses. I admit for the purpose of the argument, that the prisoner had the undoubted proofs of his wife's habitual adultery with the deceased. He sees the flag of the adulterer waving, and he slays him on the instant of meditation of the violation of the husband's rights.

Why, what rights had the prisoner in this woman at that time? If he be as they describe him, and as he is presumed to be, he must have loathed and deserted her. What outrage then could be committed on him that could add to his suffering? Do the counsel mean that still by condonation the prisoner might have been willing to take back to his arms the wife who had been a confirmed adulteress for many months, and that he would have done so but that he saw the flag of the adulterer waving in front of his house? I fancy not.

Looking at it then not as lawyers, but as men, with the common heart of mankind, he would ask what was there in that meditated act at that time to justify the prisoner in taking the life of the deceased? Nothing, he submitted. What was there in the eye of a lawyer? One may take life to prevent the commission of a felony; but was that meditated act a felony? The counsel on the other side

had urged that it was not only not a high crime by the law, but that it was no crime at all; that because the laws of society did not furnish satisfactory punishment for such a crime, they are remitted to the higher law. That was the theory of the gentleman who developed that portion of the defense.

He said that Daniel E. Sickles had made a compact with society, one of the conditions of which was that society should furnish punishment for the adulterer; otherwise it was no bargain. Well, it seems, according to this doctrine, that Mr. Sickles did condescend to enter society under that compact, and that society failed to fulfill this pledge. His destiny brought him to this unhappy District, where society had failed to provide for such a case, and therefore, under these circumstances, another law goes into operation.

But we are now instructed that the law furnished no sufficient punishment for adultery, and that woman, who is the mother of us all, woman the wife, woman the sister, woman the daughter, woman, embodying all that is purest and noblest and most elevating in creation, must be protection from herself. And as the law does not protect her, it follows that she must be chained, or barred in a dungeon, or else her husband must have full power to avenge his wounded honor.

The jury are told that they must take heed themselves. They are appealed to to remember that such is the nature of woman whose "name is frailty," that the husband must stand at the door, revolver or bowie knife in hand; that it must be understood that that higher law controls which authorizes him to deal summarily with the adulterer, and to put him to death; or else, as is perfectly clear from the well known nature and character of woman, an adulterer has only to wave his flag—to beckon to her—only to show her how she may desert virtue, bring ruin and desolation to her household, and make her children motherless—and she will do it. She will do it. Not this woman, but all women, sir.

I will not trust myself, at this moment, to remark upon that doctrine as I think it should be remarked upon. I have referred to it incidentally and without premeditation, in connection with this idea that there is here no law to punish adultery. That according to the law under which your Honor sits, and which you are sworn to administer, adultery is no crime. But then what follows? Why, it follows that the taking of this life was not the taking of a life to prevent the commission of any crime known to the law. That is the result of the argument, and I am now on the question of how it is to be determined by a Judge and a lawyer—the only doctrine that I know applicable to the subject being that to prevent the commission of a felony about to be immediately committed. A man may justifiably take life, but he may not do so in regard to any minor degree of crime, and *a fortiori*, not where the thing attempted to be prevented is no crime known to the law. But there the gentleman (counsel for the defense) is mistaken. Adultery is a crime known to the law of this District.

Whether it is or is not punished as the gentleman or myself might think it ought to be punished, is not material. I myself have known

cases of adultery tried in this Court—two or three of them. In one your Honor was called upon to determine what was meant by the term adultery, and which of the parties in a given case were entitled to that legal designation. But that is immaterial. It is a misdemeanor under the law of this District; certainly it is not a crime to prevent which the law arms any one, or, exclusively of all others, the person who has been injured, with the right to take the life of the person meditating the crime.

On this ground, in regard to which he felt the most solicitude, because he thought it concerned the administration of justice eminently, and the peace of the District eminently, he had nothing more to say as to the offer of this evidence on the ground of tendency to prove insanity.

He would repeat what he had said before, that it was only competent to inquire into the question of insanity itself, not into the cause of that insanity.

*Mr. Brady.* Was the case of adultery to which you refer as being tried here an indictment under the statute?

*Mr. Carlisle.* Yes, under the statute of Maryland.

*Mr. Magruder* inquired whether under the statute of Maryland, the punishment for that crime was not a fine of a hundred pounds of tobacco?

*Mr. Carlisle* could not say exactly what was the punishment.

*Mr. Brady.* Then the only satisfaction an injured husband could have would be a chew of tobacco.

*Mr. Phillips* said the gentleman who addressed the Court took occasion to express his sympathy for the prisoner, and declared in very emphatic terms, if he thought he would lose that sympathy he hoped his life would not be preserved to end this trial.

*Mr. Carlisle* replied he was unfortunate if he had not succeeded in making himself understood. What he said was, that he did not mean to say one word to deprive the prisoner of the sympathy which might be extended to him; that so far as he was concerned, he would conduct this case in the spirit of truth, justice, Christianity, and that if he willfully and knowingly departed from this course, he trusted his life would not be spared to end the trial.

*Mr. Phillips* had so understood him.

*Mr. Brady.* Certainly, we don't want Mr. Carlisle to die.

*Mr. Carlisle.* We are growing so fond of each other, sir, that I am afraid it will prevent us from doing our duty.

*Mr. Phillips.* Let us contrast with the declarations the gentleman has made the object of the speech he has addressed to us, which, in spirit and style, though this is a matter of taste, is rather becoming the hustings than to the Judge on a question of law. Let us controvert them with the temper and manner of that speech. While he has on one hand given an expression to the sympathy which ought to exist everywhere, on the other he has argued to exclude from the consideration of the jury the ground of the provocation which induced the passion which led to the commission of the act. This was the whole scope, object and effect of the speech; it was that the jury

should not have the proof of character, the provocation which led to the commission of the act.

*Mr. Carlisle.* You are quite right.

*Mr. Phillips.* The gentleman also declared, if he thought this case, as made out according to the evidence given, could produce from the jury another verdict than that of murder; he trusted the bones of himself and his children's bones, which he expected would be gathered round him, might not rest in such a land; there was pollution in the atmosphere of such a country. I give my friend fair warning. There is not in this broad land, where liberty and virtue walk hand in hand, there is not a spot where a jury would be found to render such a verdict in such a case.

*Mr. Carlisle.* You do not state my proposition accurately. I said nothing about the facts of this case. I was speaking with reference to a suggestion of the counsel, and I said, when the day came that a jury undertook to set their faces against their sworn duty, and against the law and evidence, I would wipe off the dust of my feet of this community.

*Mr. Phillips.* The gentleman's explanation does not change my construction. He maintains that such a case as is made by the evidence is murder, and nothing else. I cannot mistake his argument.

*Mr. Carlisle.* If the Judge lays down the law as murder the jury will conform to it.

*Mr. Phillips.* While I confess in this matter I feel as a husband and father—a feeling no doubt shared by every man who hears me—I enter this courthouse endeavoring to suppress those feelings, and bring myself to the act of thinking and speaking as a lawyer. In this spirit, discarding, I trust, for all time, any feelings which may have been excited by the remarks of my friend, for I take pleasure in calling him my friend—

*Mr. Carlisle.* I reciprocate it.

*Mr. Phillips.* I proceed now to discuss the merits of the case. The evidence we propose to offer is on four points: First, justification; second, provocation; third, insanity; fourth, the explaining words uttered by defendant at the time of the homicide, and proved by the prosecution.

To one of these points I will refer—namely, as to how far the evidence is proper to show the prosecution on which the passion in this case is to be justified or excused. It was admitted on the opening that if the evidence be competent for any purpose, there is an end of the question; that the weight of it is not for consideration.

Is it competent to prove the fact of the adultery? The indictment sets out by stating what the injury is, and represents the accused as having been moved by the devil, as a preliminary or introductory remark—nothing more; that he was instigated by evil passion or spirit. The old form of indictment has been followed, which would be more honored in the breach than the observance. The same evil spirit was a figurative description of the devil.

But further on in the indictment the language is set out more legally, and the technical words, "murder" and "felonious" are used.

All these words and description embrace the malice and premeditation on which alone the law will rest any accusation of murder which this indictment charges.

The distinction between murder and manslaughter is so familiar to the minds of lawyers and your Honor, that it is needless to enter into technical language to declare it. We know that in murder there is premeditation and deliberation, out of which the law raises the malice aforethought, and that in manslaughter there is absence of deliberation, premeditation and malice aforethought: and this is sufficient to indicate the true line between these two offenses. With reference to malice and its peculiar character, we find the most satisfactory definition to be this: Its presence is discovered when it has been attended by such circumstances as are the ordinary symptoms of a wicked, depraved and malignant spirit, and which indicates a heart regardless of social duty and deliberately bent on mischief.

To sustain the indictment, you have to show the presence of that malice which is vigorously and accurately described in the law books with reference to the question of malice. So necessary is it to constitute murder, and sustain an indictment for murder, that in a case where express malice is proved by old grudges, threats and killing subsequently, yet, if a fresh provocation, calculated to excite the passions, has intervened between the old grudge and the commission of the act, the law refers the killing to the new provocation, and not to the old grudge or threat.

It is said by my learned friend that malice may be presumed of the act of killing. Granted. But this is only a presumption, and, like other presumptions, may be rebutted by evidence showing the fast friendship of the parties, which would exclude malice. It may be shown that the killing rose from passion excited by just provocation.

There are two modes by which the prisoner may relieve himself from the presumption which the law casts on the act of killing, and thus change the character of the offense for which he is indicted. As to the first mode—of rebutting malice—we would be enabled to enter into proof, and show the kind relations between these parties at a date long anterior to the time of killing. Now we propose to use the second mode of rebutting the presumption of malice, which would arise out of the killing, to wit: We propose to prove the passion, and the provocation which led to that passion.

As to the first, the rule, which has been well laid down, and on which this Court has acted, is, that expressions of good will and acts of kindness on the part of the prisoner towards the deceased are always considered important, as showing what was his general disposition towards the deceased, from which the jury will be led to conclude the intention was not what the charge imputes.

When we come to the second mode of rebutting the presumption of killing with malice, by showing passion as connected with the prosecution, we are met by the objections of the gentlemen engaged for the prosecution, who say, however true that may be, there is a wall built up by the law which forbids its access to the jury.



We think we have proved the passion. That is not for us, but for the jury to determine. Then, in order to rebut the presumption of malice, by which we would change the character of the offense, we have only one thing to do, to wit: to show that passion rose from sufficient provocation, and while we are in pursuit for the doctrine of the law, and while attempting to rebut the presumption of malice, the gentleman takes his stand with a firmness which, in his opinion, will not and cannot be shaken, and speaks about certain things which would lead to most disastrous consequences to the community. If a father kills one who has beaten his son, and he is indicted for murder, to what authority would the gentleman refer to exclude from the jury the evidence of the provocation?

It is admitted that if a father kills one who has assaulted or killed his son, you may show the provocation as connected with the passion, for the purpose of reducing or mitigating the offense; but here the proposition is insisted upon that the slayer of a man who has committed adultery with his wife, cannot show that the passion which led him to the killing was produced by that provocation.

The very last decision which my friend read described adultery to be the greatest provocation which can be inflicted on any human being. The language of the Judge was, "it is more than human nature can bear." If adultery be the greatest provocation that can befall a man, other provocations are necessarily of a less degree—I presume there is no misapprehension of that. The killing of a man who has beaten his son is not, therefore, the greatest provocation, for he says adultery is. He may show provocation, but as to the latter, the greatest provocation, we are to be excluded.

But coming nearer to the point, we have the proposition that if the husband find or see the wife in the act of adultery, then the provocation, and the passion induced by the provocation, would mitigate or lessen the offense charged as murder. But if he did not see it, then the adultery, however heinous, and under whatever state of aggravation the mind can conceive, forms not the slightest provocation in the eyes of the law for the act; and the gentleman in giving his construction of the word "finding," which is the word in most of the books, interprets it to mean "see with his eyes the act of adultery."

Now, why say the eye? We have the eye, the ear and the touch; all of them are mere messengers of the mind, in which knowledge is obtained. The knowledge thus derived is to be the proper subject of human action. In many cases there might be knowledge derived through the ear as by the eye. What if a man sees another entering his bedchamber, and applies his ear to the keyhole and hears such evidence as would give him indications of but one act, and which it is not necessary for me to describe or to paint, what if the man should slay the adulterer?

Would the gentleman tell us in a labored argument that there was no provocation because the man did not see the thing, and that it was only through the ear or the mind he obtained the information of the adultery. Take the question of touch, where neither the eye nor

the ear is invoked as the messenger of the mind. In the course of my experience I have been engaged in three cases of homicide under such circumstances. In one of them the facts serve to illustrate the point on which I am speaking.

A stevedore, whose business was the shipping in Mobile Bay, after an absence of some weeks, returned to his home. He arrived about twelve o'clock at night; he went into his house, a single story with a piazza around it and two doors, one leading to the bedroom, the other to the parlor. On entering the chamber, where thick darkness prevailed, he saw nothing, heard nothing. He advanced to the bed, put his hand in it, and felt a man. He drew his knife. The knife of a stevedore—long and broad bladed, and stabbed him repeated blows, till he fell from the bed to the floor, dead; the slayer called for a neighbor to bring a light; he put it in the face of the deceased, when he found that, as in this case, the man who had most grievously wronged him, he had held to his bosom as a friend. I merely use this case as an illustration. It was the touch that communicated the knowledge of the fact to the man's mind. Where then is the reason for the argument that no provocation of this kind is worth anything in a court of justice except it be presented to the eye.

April 16.

The argument on the question of the admissibility of evidence of adultery was pretermitted for the present, in order to allow Peter Cagger, of Albany, to be examined, he being desirous of returning home this afternoon.

*Peter Cagger.* Am a member of the bar of Albany; have known Mr. Sickles for twelve years and upwards; saw Mr. Key but once, in June, 1858; was introduced to him by letter from Mr. Sickles, and engaged him in a case as counsel. I retained Mr. Key's service on the ground of that letter of introduction.

*Mr. Phillips.* I had discussed yesterday the following propositions; 1. That if the evidence offered is admissible for any purpose it must be received. 2. That the issue presented by the indictment is not whether there has been a killing, but whether there has been a murder. 3. That, to constitute murder, there must be established a killing with deliberate intent or malice prepense. 4. That the malice of the law implied a wicked, depraved, and malignant spirit, a heart regardless of social duty, and fatally bent on mischief. 5. That even in cases of express malice, arising out of a past grudge, if there has intervened a new provocation, it was not to be presumed the killing was on the old grudge. 6. That in cases where the law presumes malice from the act of killing, this presumption may be rebutted by expressions of good will and acts of kindness on the part of the prisoner towards the deceased, always considered important evidence, as showing what was his general disposition towards the deceased, from which the jury may be led to conclude that his intention could not have been what the

charge imputes. (Quoting 2nd Russell, page 698.) That this presumption may also be rebutted by showing that the killing was in passion, for passion arising from sufficient provocation, is evidence of the absence of malice. Quoting from the Commonwealth against Bell, page 162. 7. That as the law declares adultery to be the greatest of all provocations, there could be no such legal absurdity as permitting evidence of the lesser provocation and excluding evidence of the greater. 8. This brought one to the consideration of the admission of the prosecution, that if the accused had seen with his own eyes the very act of adultery, then the provocation given could be given in evidence—but not otherwise.

This I demonstrate to be wholly unreasonable and fallacious by showing that the eye, the ear, and the touch were but media through which facts were transmitted to the brain, and that this governed the will and decided the action. I was illustrating the position that the knowledge of the adultery, at the time of its commission, could be as definitely conveyed to the mind by the ear or the touch as by the eye, and cited examples to this end, when the adjournment of the Court took place. I had yesterday presented a case in illustration of the falsity and absurdity of the doctrine that a man must see the act of adultery to set it up in justification.

I might also illustrate the same idea by the case of the blind man. I have seen a picture of Hogarth's representing a scene at an English hustings, where an old man, with the snows of many winters on his head, and without his right arm, which he had lost in the service of his country, came up to vote. The old man was challenged, and the Judge declared that, inasmuch as the form of the oath required the persons taking it to place his right hand on the book, and that as this man had no right hand, he was not a competent voter.

That doctrine was about as absurd as the doctrine laid down by the prosecution that the husband must find the adulterer in the very act. Suppose a husband found the adulterer in his wife's bed, in a state of quiescence, or found him disrobing or clothing himself in the bedroom of his wife, would it be held that that fact would not be a legal justification?

The *District Attorney* did not know that there was any well fixed line in this matter.

*Mr. Phillips* replied that there was no reason for this rule, as in the nature of things it would be impossible to make the proof, and where the reason of the law does not apply the law itself is at an end. Did not the adulterer invariably endeavor to shield himself from detection?

Besides, if the husband did find the parties in the act, how was it to be proved? The tongue of the adulterer is palsied, the tongue of the wife is silenced by the law, and the prisoner cannot give evidence in his own cause. It was not therefore the mere witnessing of the fact but the knowledge of it, however derived, which

stirs the human passions and lashes them into fury; and if the adulterer is killed in the transport of passion thus aroused, the law, which is a rule for the government of man, has regard for the frailties which hang around the human heart. The most liberal interpretation of the law does not require that the killing should be concurrent with the act of adultery.

We refer to 1 Russell, 4-10, to show that though the killing may be subsequent, yet it will not be murder if not done deliberately and upon revenge. In the case of Manning, even there the judges unanimously declared "that the killing was but manslaughter, and the prisoner having clergy at the bar the sentence was that he be burned in the hand, and the court directed the executioner to burn the hand very slightly as adultery was the greatest provocation that a man could receive, and was too much for him to bear."

With a view of testing this matter still further, suppose they were to convert this judicial resolution of the Judges in Manning's case into a statute against adultery, that any person found in the act should suffer such and such punishment, and if a person were indicted under that statute what amount of evidence, he would ask, would be sufficient to convince the jury that the offense had been committed? Would it be for a moment contended that the witnesses must testify to seeing the very act itself?

The statute of Massachusetts declared that any party who had been guilty of the crime of adultery should suffer so and so, and then what evidence was necessary to convict a man under it.

In 2 Greenleaf's Evidence it is declared that it is not necessary to prove the fact of adultery, but to prove such facts as led to the inevitable inference that the offense had been committed.

The circumstances must be such as to lead the guarded opinion of a discreet man to such a conclusion. Counsel would ask whether the knowledge on the part of the husband of the adultery is required to be greater and more complete, in order to justify the provocation, than would be required by a jury of twelve deliberate and impartial men to convince them if they were trying the very issue of adultery. To ask that would be to reverse all our notions in reference to the principles of law, and in reference to the principles of humanity.

In the case of John, he was a slave, and there being no marital rights recognized as between slaves, there could be no adultery. But the counsel on the other side had said there was no distinction in law between slaves and freemen.

*Mr. Carlisle.* Oh, no, I did not say that. There are local laws, of course, affecting slaves.

*Mr. Phillips* supposed that the gentleman had reference then to moral principles. He would take that to be the case, and he would ask, would there be no distinction or difference of feeling between the case of a white man, whose marital rights are recognized by law and by society, and those of a black man, who has no marital rights? The very statement of the proposition was enough

to show its fallacy. The counsel would ask, what would be the condition of defense, if, after excluding the evidence of the provocation, the District Attorney would call upon the jury to declare that the passion of the prisoner, which had been proved, was fictitious and feigned, not real.

*Mr. Carlisle* thought he had noticed the point by saying that the passion was immaterial unless produced by provocation, and that a previous adultery was no legal provocation.

*Mr. Phillips* held that if they had a right to show the passion, they had a right to show the provocation for that passion, so as to exclude the possibility of argument that that passion was fictitious, not real. Counsel referred to 1 Phillips Evi. 172, and 1 Greenleaf 114. What did they offer to prove in this case? A systematized adultery, carried on in the absence of the accused, in his house and in the house of the deceased, that these facts were made known to the prisoner, and that, a few moments before the homicide the flag of the adulterer was floating in the very eyes of the prisoner.

Under these facts, whatever calmness time might have imparted to the heart of the accused after his first knowledge of the transaction, they insisted that before the killing there was a new provocation in the eyes of all reasonable men to justify the commission of the act. Counsel was grieved to see that counsel for the prosecution had laid down the proposition that when the prisoner had knowledge of the faithlessness of his wife, there was no cause for passion.

*Mr. Carlisle* only made that point in answer to the plea of the homicide having been committed on the part of the prisoner to prevent the crime of adultery.

*Mr. Phillips.* The argument was, that because the wife had been loathsome to the prisoner, the signal of the deceased formed no ground for passion which would lead to justification.

*Mr. Carlisle* disclaimed any such idea, and hoped the Court did not so understand him.

The Judge said he had understood it as *Mr. Carlisle* did.

*Mr. Phillips.* His Honor occupied a position in this case which seldom falls to the lot of any judge. He was not called upon to make a law in this case, but to apply the analogies of the law to the new facts presented in this extraordinary case. This sometimes occurred in criminal cases, and it signally occurred in the present; for the point now discussed was, as far as he knew, never discussed or adjudicated by any tribunal in this country or in England. Here they offered to prove the truth.

What were the rules of evidence made for, but the elucidation of the truth? And should these rules be converted into an instrument for the suppression of the truth? Before such a principle was established it would be necessary, in the words of Curran, "That language should die away in the hearts of the people, and that humanity should have no ear, and liberty no tongue." That is the period and degradation, when alone such a doctrine can be successfully maintained in a court of justice.

If on this point there should be any doubt in the mind of your Honor as to whether the testimony should be admitted or not, that doubt ought to be resolved in favor of the application in this case. The oldest trial on record having any analogy to this was that of Orestes, for slaying the adulterer of his mother, which was tried before the court of the Areopagites. The Goddess of Wisdom is represented as having presided there, and having cast her controlling ballot in favor of the accused; and from that day we have had the beautiful type thus derived wherever civilization has spread, that justice tempered with mercy constitutes the rule which determines the action of the courts of justice.

The presentation of the case is thus: The counsel for the defense ask that certain evidence be received; the counsel for the prosecution ask that it be excluded, because if received the Court is bound, as a matter of law, to decide that it goes for nothing; the question for the Court is virtually this: whether the testimony shall be first received and the effect judged of afterwards.

He then stated the propositions which were offered yesterday by the defense. We, he said, offer these pure propositions on four grounds: First, as making out a justification in the act of Mr. Sickles; second as establishing the provocation which led to the perpetration of the act; third, as illuminating the state of Mr. Sickles' mind with regard to insanity, or a mind of unsoundness at the time of the commission of the act; fourth, as proving the truth of Mr. Sickles' declaration at the time of the affray, that the mind that induced him to the commission of the act was the sense of the adulterous intercourse between Mr. Key and Mrs. Sickles. In other words, the facts show that he was the instrument in the hands of his Maker, to carry out the judgment against adultery, which is denounced by the Court of Heaven. It was necessary for him to repeat this, as the senior counsel for the prosecution (Carlisle), had claimed he had misunderstood him. The counsel had entirely misconceived the scope and effect of his address.

*Mr. Carlisle.* Quite unintentionally.

*Mr. Phillips.* In order to sustain the prosecution, the evidence it is claimed, must establish four facts: First, that the defendant was moved and seduced by the instigation of the devil to perpetrate the crime; second, that he killed the defendant feloniously, maliciously and of his malice aforethought; third, that the act was against the peace and government of the United States; fourth, that at the time of the commission of the act the deceased was in the peace of God and the United States—and we distinctly and confidently say the deceased was neither in the peace of God nor in that of the United States.

We propose to show that we are not invading a new domain of proof. We are not offering facts or evidence which have not already been encroached upon by testimony. We are seeking to extend the line of proof already commenced, and if it stops here we leave no doubt, morally or legally, in the mind of any man of the

existence of this very adultery which we seek to establish by more positive proof.

The prosecution thought we would have difficulty to prove this, and that they might get the benefit of supposed failure. In other words, the prosecution experimented with us and allowed us to go a certain stage and when they found us able to extract the proof they ask the Court to stay our progress.

The question is whether the Court can exclude the evidence we seek to adduce. We have offered proof as to the friendly relations which existed between the defendant and deceased, and that Mr. Key availed himself of the friendly acts of the defendant. We have shown, in the second place, that immediately before, and up to the time of the commission of this alleged criminal act, the defendant was in a state of frenzy or mental unsoundness, which forbids the idea of killing with rational mind. In the third place, we have sworn that at the very time of the act Mr. Sickles declared what was the maddening cause of his conduct. Fourth, that the deceased constantly made the defendant's the place of adulterous assignation up to the time of his death. Fifth, that Mr. Key and Mrs. Sickles not only went in the direction of the house where it is charged they committed adultery, but that before the death of Mr. Key they were located outside the house in the very act of entering the doors.

The simple question is, whether our proof shall take them beyond that door, and whether we shall be permitted to show the jury the guilty correspondence between them, so as to leave no doubt on the point that the deceased and Mrs. S. were pursuing a confirmed and habitual adulterous intercourse. In other words, this was not an attempt to invade a new territory of proof, but to exhaust all their proof in regard to a matter in which they fairly exhausted their proof.

It was a rule of law that where objection is to be made to a line of proof, that objection must be made in line, and once the threshold is passed it cannot be required of the party to retrace his steps. He asked the Court whether the law countenanced such an experiment as that evidently made by the prosecution in this case? In the case of a witness who answers any question which he might not have answered, he is not allowed to object to answering further questions on the same point. The prosecution had permitted the defense to show certain facts which did not essentiate the main fact; and now would they ask this Court to stultify itself by restraining the proof on the point of adultery? After having allowed the defense to go so far, the prosecution urge the doctrine that, unless the husband detect his wife in the very act of shame he has no rights against the party who has deflowered her body, and cannot set up the adultery as a justification for his act. In order to reduce the grade of offense, it is urged that the husband must see the act of shame with his own eyes; otherwise, he must stand before the Court and the world as one of the highest criminals known to the law. So long as passion was carried on secretly and

clandestinely, so long would the husband, according to this doctrine, be deprived of all right as against his wife's adulterer. His Honor knew that in cases of divorce, a chain of evidence which led the mind to the irresistible conclusion of adultery was all that is ever required (Counsel referred to 2 Greenleaf, sections 41 and 43.) Proximate facts, leading on to the demonstration or establishment of guilt, are all that the law requires in cases of divorce. Adultery is a continuous fact, and, where once shown to exist, it is presumed to overshadow all subsequent associations of the parties. A great effort was made here to excite prejudice against the ground taken by the defense. Now, it was hardly necessary for him to appeal to this Court to say that he had not laid down the doctrine that any man has a right to slay an adulterer in cold blood, and as a result of calm deliberation. Whatever my views are on that subject, I have distinctly restrained their expression in this case, because at every stage of the case I have insisted that there is not a single feature communicating premeditation to the act which places the defendant at the bar of this court.

What I have said, and what I say now, and what I am prepared to say, is this, that when a husband catches an adulterer of his wife, either in the act of coition, or so near to that act as to leave no doubt of his guilt, that the frenzy which seizes on the husband is the mode which the Almighty has adopted of turning that husband into his instrument for carrying out the judgment which He has denounced against the adulterer; and if the Bible proves anything, I challenge any man who even professes a nominal belief in it, to gainsay that. I say that the Almighty has made us with such instincts that there are certain provocations so operating on us as that when they do work on us we are thrown on these instincts, and that our acts become but the execution of the law of Heaven. Now I will suppose a case. We have all had mothers, and can enter into the feelings which encircle a relation of that kind. Could it be expected that a son should stand in the presence of his mother, and see an indignity, whether it amounts to violence or not, offered to her? And if he rose in the midst of his feelings and slew the party who outraged the parent from whose womb he came, where is the jury that would convict him of crime in so doing? Now what is it that justifies, what that necessitates, a slaying under such circumstances? It is the irresistible influence of that love which the great Creator has implanted even in the breast of a brute towards the parent brute that produced it. Is not that precisely the affection that identifies itself with the relation of husband and wife? And if at the time of the indignity to that relation, the party who is innocent of any participation in that indignity is so frenzied by these instincts, which are a part of him, as that he could not resist being driven to the result that is inevitably placed before him, he thus becomes an involuntary instrument in the execution of a judgment for which, and the execution of which, he was intended by nature to be an instrument. That is the doctrine I have endeavored to place before the court and jury.



It is unnecessary for us to insist in this case that a husband, after he had discovered the fact of his wife's adultery, has a right deliberately to conclude upon and accomplish the death of the adulterer. Where the husband slays under the influence of frenzy, he slays in obedience to the will of nature. Where he slays in the possession of his faculties, he slays in obedience to his own will. Our doctrine goes to that extent, and to no greater extent. When the mind is frenzied there is no will but that which directs everything; but where the mind is in the possession of reason, then it is in possession of that will which the great Creator has vouchsafed to every mind. An effort has been made here to satisfy the Court that we are trying to throw this defense back on what is odiously called the higher law. The origin of that term is perfectly well known to all of us. It originated with some fanatics, who, for the purpose of accomplishing political ends, would subvert the structure of our government. So far as any odium is sought to be thrown on this defense by identifying it with that doctrine, we disown connection with these words; but I say that as in the case of individuals, so in the case of communities: like individuals they are required to take the administration of the law into their own hands, and administer it for their own benefit; because those who have been confided with its administration have not been true to the duties imposed on them. We would here refer to the case of the Vigilance Committee of the City of San Francisco. If there are periods when, and at which, communities are justified in rising and resenting and punishing summarily the wrongs under which they have so long groaned, I ask whether or not in analogy to that individuals may not at times, too, become invested with similar rights, and whether they are not entitled to rise in the dignity of their individual natures and resolve themselves into the instrument of Deity for the purpose of accomplishing and carrying out his ends? The Sermon on the Mount—St. Matthew, 5th chapter, 28th verse—shows that the body of the wife is to all intents and purposes defiled by the lustful eyes of the man who lusts for her:

But I say unto you, that whosoever looketh on a woman to lust after her hath committed adultery with her already in his heart.

So, gentlemen, so far as the adultery of deceased could be perfected, it was in the course of being made perfect at the very time he was met by the defendant on the occasion leading to the affray. As to the benignity of the law in allowing the defense of adultery to reduce the grade of the offense to manslaughter, we would ask, Is the law benign? Is that the mercy which the jury are in the habit of asking when they say the Lord's Prayer? Is the law benign, is its benignity to be found in reducing the act of the husband from murder to manslaughter when he finds his wife actually engaged in her act of shame? Is that benignity?—is it mercy?—is it lenity? And yet the counsel for the prosecution say that when the husband catches the wife in her shame the law is benignant—then and only then. This doctrine of the prosecution was mainly based on the case of John, cited in 8th Iredell. All the remarks

made there by the Court were *obiter*, for in that case—a slave case—the rights of the husband did not exist. The *obiter dicta* of Judges had been the occasion of more confusion in the law than arose from any other or all other causes. His Honor would find that that case in 8th Iredell repudiates the doctrine of moral insanity—a doctrine recognized by his Honor and all the great jurists of the country. Why, then, should it be relied on in regard to other points? What was the origin of the rule which says, that where a man catches his wife in her shame, and slays the adulterer, his offense is reduced to manslaughter? In the case in which that rule was declared, there was a special verdict made in reference to a particular state of facts; and was it to bind all other cases? The rule in the case of Maddy is reported in Hale's Pleas of the Crown, which were written in 1700. That rule was copied by Hawkins, which was written in 1724. It was again copied by Foster, and again by East. Did these writers sanction the rule? No; all they did was to refer to it, without giving it the weight of their names at all. Therefore it was a mere historical fact, not endorsed by any of these authorities, that in the reign of Charles II. such a rule was declared by the Court of Queen's Bench, on a particular state of facts. Was that rule to govern this case? Juries were at that time mere instruments in the hands of the Court. Jury trials were then a mockery.

Is this great institution, which like a mighty tree strikes its roots deep in the soil of the constitution, to be restrained and restricted in its growth for the purpose of encircling its trunk and branches with an arbitrary rule made under a despotic government and in a corrupt age? The jury system is now developed and is perfect, and it was idle to try to apply to it the rule of two centuries since. Then the jury had no right to pass upon the motives or intention of the accused; that was kept for the decision of the Judge; but here the jury was as absolute as the Autocrat of all the Russias; his Honor could not restrain them, nothing his Honor could say should have more weight upon them, in reference at least to the facts, than what fell from the lips of the counsel.

Another consideration weighing against the rule in Maddy's case was that the Judges were anxious to aggrandize and enrich the coffers of the king, and while there the prisoner was absolved from all corporal punishment, his estates passed into the king's treasury. To show that counsel was not reviling the old law, he referred to Foster on that point, page 264. There was much progress made in the law since that time. To illustrate that he referred to the difference between now and then, in regard to the plea of insanity.

According to Lord Hale, nothing but a perfect extinguishment of the candle of the mind would satisfy the behests of the law in regard to irresponsibility. If the law of sanity had changed so, so had other laws changed, and as well might Hale be cited now to show that his Honor was not right in his ruling in cases of insanity, as be cited to show that it was necessary for a husband to

catch his wife in the act of coition to reduce the grade of homicide to manslaughter.

Besides, it was suggested to him by his colleague (Mr. Brady) that Lord Hale presided in cases of prosecution for witchcraft; therefore, he said, that *non-obstante* Lord Hale, this question was today a new one. Counsel referred to the statute of James I. in regard to homicide, in reference to which statute it was held that the case of an adulterer stabbed by the husband was not within the statute, and if the husband was indicted, under the statute the jury were directed to acquit; and so the indictment in such cases was made under the common law. Shylock-like, they secured their pound of flesh by indicting the husband under the common law, so as to get his estates for the crown. Was not this hypocrisy? Was it not such protection as the wolf gave to the lamb, covering and devouring it? It would be for his Honor to say whether this rule was to be the rule of morality and society in these days.

In Pearson's Case, in Lewin's Crown Cases, 216, the judges followed with the most implicit blindness everything that emanated from such a Moloch as Lord Hale. For the purpose of enforcing the right of defense to this testimony he submitted: first, the Constitution of the United States, as having broken down the old system of special verdicts, arguing if the Court can dispense with a jury it can abrogate that provision of the Constitution which provides that the trial of all crimes, except in cases of impeachment, shall be by jury. It is for the jury themselves, on the facts themselves, to form judgments with all the surrounding circumstances. North or South Carolina might make what laws they please for the trial of State offenses, but they could not come into the federal courts and strike down the constitution of the land. The learned counsel (Mr. Carlisle) said he loved North Carolina law because of its mustiness of one hundred and sixty or one hundred and eighty years and the inference was that he would rather have lived at that time; but as for himself (the counsel for the defense) he would prefer to live when he now did than then. He would show that we were not to kneel to old idols and run after strange gods; the gods we are to worship are our household gods; we are not to run after those of other countries. The second point is this: In the present case the intention is synonymous with the state of the mind, and the causes which produced the state of the mind are admissible for the purpose of illustrating the defendant's acts. In Day's case this Court received the whole narrative; you permitted the prisoner to show that his wife had a child three or four months after marriage; you permitted him to establish all the facts in evidence; and at the close of the case the effect of these facts judged of. In Jarboe's case the same thing was allowed; the deceased seduced the prisoner's sister, under promise of marriage. Now, the door through which these facts entered in these cases is sought to be closed against us. In the case of Singleton Mercer all the facts were narrated; for the sister of Mercer was permitted to take the stand and trace out her acquaintance with Heber-

ton. In the case of Smith, which will be found in Wharton on Homicide, all the facts were permitted to be elicited; Captain Carson had absconded from his wife, and been gone two years without being heard from, and his wife married Smith. Carson turned up and claimed his wife. A contention occurred, which resulted in the second husband killing the first; all the facts were received in evidence, and the case adjudged in view of them. So in the case of Hatfield, showing that disease was produced by a wound received in battle.

In all these cases the Court permitted the party to trace out the act to the real cause—there was no limit of time. We say, in the next place, the testimony offered establishes the truth of the declaration at the time of the occurrence; that it disproves the idea of mere pretense; it goes to show that Mr. Key had drawn off Mr. Sickles' wife from her true and lawful allegiance, and that Mr. Sickles did not imagine or feign what he uttered, but uttered the real fact; that the fact existed precisely as he declared it, and he declared it because he was informed of it in such a way as to leave no doubt of its existence.

On what principle, then, was the defense not entitled to it? If the defense was that Mr. Sickles slew Mr. Key under a delusion, we would prove that he imagined the fact, and they would trace out the origin of the delusion. Now, as the law permits it to be shown that a man can become insane from real as well as imaginary causes, what difference is there in the application of the rule?

In the time of Lord Erskine it was only delusion; now it is admitted man can become insane from real causes. If we can show the origin of our delusion and all the circumstances, why are we not entitled to trace back the state of Mr. Sickles' mind and all the causes which produced it, although they may be real. As it was in connection with his wife that Mr. Sickles' frenzy or temporary mental unsoundness arose, shall we not show the extent and character of Mr. Key's relation with her?

Where the act of the defendant was committed under the influence of the marriage relation, and everything turns on the conduct of his wife, why should he not be permitted to avail himself of such conduct to shield himself from conviction, when the conduct of the wife was the cause of the frenzy which superinduced the act which he committed? The knowledge of the adultery of Mrs. Sickles was the propelling power, and was a part of the *res gestae*.

All the circumstances of the case must be considered. No matter what the chasm is, if the intervening circumstances render the chain continuous, and certain facts happening, no matter what the distance, they become a part of the facts they qualify. No matter when the adultery took place, the question is, When did it first come to his knowledge? This is the time it took place, when the husband first heard of it. It then took place before his eyes. He was the witness of his wife's shame, and in imagination could carry himself to that period of time when on her bed she surrendered herself to the debasing lusts of Mr. Key. The effect is then produced, and that is

the attitude of the defendant. He became satisfied of the fact the night before; his feelings were hovering and culminating through the night; he had no sleep, this victim of grief; there was everything to drive his excitement forward to the maddening point, and every moment he heard the story of his wife's shame, and saw the infamy before him. It was the freshness of the occurrence of the facts for which he was placed at this bar.

Another foundation, another ground on which the evidence is important, is that it explains the meaning of the waving of the handkerchief, and places the deceased in *flagrante delicto* at the time of his death. He then committed adultery in his heart against the prohibition of the Good Book. Now, Key had seen Mr. Sickles come from his house, and went in the direction he knew he would not encounter the husband, for the purpose of getting up an adulterous intercourse with Mrs. Sickles. Could any one doubt that this was the true explanation of the conduct of the deceased at the time? There is enough in the case already to show what the waving of the handkerchief meant. But why are we restrained from giving further evidence? Why deny the effect of this waving on the mind of the prisoner? It is testimony to which we are entitled. I ask if there is any doubt as to what the meaning of the fluttering of the handkerchief was, why not permit us to prove beyond a doubt that in response to the signal the wife was carried from the mansion of her husband to the place where the deceased was in the habit of enjoying her body? The last point is, even by the declaration of the deceased himself, the prisoner has the right to show the status of his mind and the causes which superinduced it. This the counsel maintained by reference to the case of King against Whitehead, and other authorities and quoted to show where a prisoner was permitted to prove that his participation in a criminal act was voluntary. We ask to be permitted to show the slaying of Mr. Key was just as involuntary as though he was hurried on by the violence of a mob; but instead of being an instrument of the mob he was an instrument in the hands of his instinct, and went forward in the commission of the act.

In one case the defense was permitted to justify by showing the declaration of an alleged thief at the time of his depositing the goods on the premises of a neighbor. The counsel for the prosecution was unfortunate in distinguishing the present case from that of Jarboe; but if the report of the case, as contained in this pamphlet is correct, it is perfectly evident that Jarboe acted on the ground that he was temporarily insane at the time of the act of slaying the seducer of his sister. This Court, in its instructions to the jury, meant the case should turn on the status of the prisoner's mind at the moment the killing occurred. It has been asked on the other side, what interest had Mr. Sickles in his wife at the time he met Mr. Key, for she then had forfeited her marriage vow? I ask, was not his grief at the pitch of despair? Mr. Sickles knew his wife had been guilty of conduct which forfeited her hold on him; he saw the

man who cut off the attachment to him; and henceforth what must have been the feelings of the man who was deprived of the richest pearl in the casket in which he had placed his jewels?

*Mr. Carlisle.* I have already distinctly disclaimed having entertained any such idea or used any such argument. One of the grounds upon which the proof was offered was that the deceased was at the time of his death actually proceeding to commit the crime of adultery with the prisoner's wife, and that the prisoner slew him in defense of his wife's honor, and to prevent that crime. In this connection I referred to the fact that, according to the theory of the defense, he had the day before fully ascertained that an adulterous intercourse for nearly a year had been carried on between those persons.

*Mr. Phillips.* If the doctrine of the prosecution is a correct one, then we ought to stop with the Coroner's jury who found who killed Mr. Key; and according to the prosecution, this is the only fact before the jury. A strenuous effort has been made to show the state of the prisoner's mind at the time of the killing of Mr. Key. If the intention is important, and the evidence bearing on it is proper, then it seems to me the defense is entitled to such evidence. If we are here merely to discover what the Coroner's jury found as to the killing of Mr. Key, and if this course is conclusive evidence of malice, and is admissible, then the preferment of the accusation by the grand jury, and trial by petit jury, are unnecessary in law. But I say that every fact, whether it bears remotely or nearly to the case, is proper to be shown, to enable the jury to understand the condition of the prisoner's mind at the time of the killing. We ask you to extend the line of inquiry. If there is objection, it should have been previously urged. It was not now for the prosecution, after experimenting with us, and finding we have the evidence of adultery beyond peradventure, to deprive us, by means of technicalities, of this benefit. I ask the Court to review.

*The District Attorney.* The grounds on which the application was made were first, that the facts recited amount to justification; second, that they amount to legal provocation; third, that they are competent evidence in connection with the question of insanity, and, lastly, that they are competent evidence for the purpose of explaining the statement of the prisoner at the time of the homicide, and explaining the motives and feelings by which he was actuated. The first two grounds could be treated of at one and the same time. The questions of justification and provocation are legal questions presented to his Honor in connection with the offer of testimony.

It has been said that the English rulings could not apply here, because no such state of facts existed. He contended that the questions were the same in substance. The proposition here implies the truth of facts offered in evidence. It was to be taken for granted by his Honor that they were true. The legal effect of those facts was to be necessarily determined by his Honor; and in that respect the Judge was performing the same functions as were imposed upon

English judges in cases of special verdicts. The question here was, what was meant by the rule as laid down in the English books of authorities, in regard to the effect of adultery as justification. The prosecution here did not contend for the doctrine that the husband must witness the infidelity of his wife. They relied on the wording of the English authorities, that if a party "be found in the act of adultery" the offense of slaying the adulterer would be reduced to manslaughter. That, undoubtedly, was the meaning of the rule; if found in the act, the killing was manslaughter; but if the husband afterwards slays the adulterer, the act is murder. The old masters purposely use the word "find." He could imagine that if a man witness from a distance—say with a telescope—his wife's infidelity, and afterwards slay the adulterer, he would be excluded from the benefit of the rule. He had been asked to define the line of this rule. It was impossible to do so; he might with as great propriety ask the other side to define the line of what they call the husband's marital rights. The law had settled it by declaring that if there were time sufficient for the cooling of the passion, the act of killing is murder. If the rule was to be extended, the length claimed by the other side, even to the case of ordinary lust, he asked what would be the state of society under such circumstances? If a man could take the life of one who had lusted for his wife, what would be the condition of society? It was not the part of the prosecution to stand up and defend adultery; it was a grievous crime, a great outrage inflicted on the rights of the husband. The question is, how a party who kills another under such provocation is to be treated in a court of justice? It had been declared here that inasmuch as the Good Book had declared that the adulterer should suffer death, and inasmuch as the civil law did not, the rights of the husband were remitted into his hands. He did not subscribe to any such doctrine. He would also refer to the Good Book to show what had been almost a judicial determination of this question, by the Founder of our holy religion:

"Jesus went unto the Mount of Olives.

"And early in the morning he came again into the Temple, and all the people came unto him, and he sat down and taught them.

"And the Scribes and Pharisees brought unto him a woman taken in adultery; and when they had set her in the midst,

"They say unto him, Master, this woman was taken in adultery in the very act.

"Now Moses in the law commanded us that such should be stoned; but what sayest thou?

"This they said, tempted him, that they might have to accuse him. But Jesus stooped down, and with his finger wrote on the ground, as though he heard them not.

"So when they continued asking him, he lifted up himself, and said unto them, He that is without sin among you, let him first cast a stone at her.

"And again he stooped down and wrote on the ground.

"And they which heard it being convicted by their own conscience, went out one by one, beginning at the eldest, even unto the last; and Jesus was left alone, and the woman standing in the midst.

"When Jesus had lifted up himself, and saw none but the woman, he said unto her, Woman, where are those thine accusers? Hath no man condemned thee?

"She said, No man, Lord. And Jesus said unto her, Neither do I condemn thee; go and sin no more."

The whole case there recited was remarkable in its incidents; it was, as it were, a transfiguration of Christianity itself—a transfiguration as glorious as that which took place about the same time in the presence of Moses and Elias. For himself he would rather have been in the pillory than in the position of the last Scribe or Pharisee in that presence. That whole case was an exemplification of the meaning and spirit of Christianity. There was no hint there that the party offended might take the law into his own hands, and be the voluntary or involuntary instrument of Divine vengeance. No; it was the genius and spirit of Christianity, stooping, as it were, from heaven, and kissing in peace the erring sister. He did not deny that when the party is caught in the act the law says that it is the greatest provocation a husband can receive; but the same law says that when time for cooling has elapsed it is no provocation at all. There was no pretense for any authority anywhere pretending to allege that it was a justification. Unquestionably it was a grievous provocation; but the solitary question to be determined by his Honor was whether it be a legal provocation; whether such a provocation as will excuse a man for the perpetration of a homicide. It had been stated that there was no instance of a conviction for murder here or in England, in the case of a husband who had slain the adulterer. He would show that there was, and for the purpose he referred to 3 Jones, N. C. 24.

*Mr. Brady.* There the prisoner had made previous threats.

The *District Attorney* read a statement case, where the Judge ruled that had the prisoner caught the deceased in the act of adultery the killing would have been manslaughter, but as the killing took place after time to cool the act was murder, and the prisoner was convicted of murder. In that case exception was taken, and the Court of Appeals affirmed the ruling of the court below, and held that the facts of the adultery did not amount to legal justification. In that case there were peculiar features; the prisoner found his wife in the company of the deceased, going out for the purpose, as he believed, of adulterous intercourse; fifteen minutes after that the husband, armed with a wooden mallet, went after his wife's paramour and slew him; and notwithstanding that, the Court held that the acts did not amount to a legal provocation. In this case did the facts amount to a legal provocation? That was the question for his Honor to decide. He held that the facts here offered in evidence did not amount to legal provocation, and conse-



quently that evidence of them was not competent in law. The learned counsel on the other side had asked for the foundation of the rule, as laid down in Manning's case—a very appropriate inquiry. Is its reason that the adultery was committed, or that that fact had a certain effect on the prisoner's mind. The law presumed that the fact would produce a certain effect upon the prisoner's mind, and, therefore, the fact itself might be proved. But whenever the law says that the tempest of passion should not exist after cooling time, then the party should not have the benefit of presumption. It had been asked what would be the evidence required in case the rule there laid down had been enacted into a statute, and the Massachusetts authorities had been quoted. They did not, it seemed to him, bear on this case. They were not on the inquiry here whether in point of fact the adultery was committed, but what was the state of the prisoner's mind in consequence of it. It was said that the case in Vol. 8, Iredell, did not bear on this case, because it was the case of a slave. One of the counsel denied that it was law, while the other admitted tacitly that it was law, but that it ought not to be law.

*Mr. Phillips.* I said that one part of it was *obiter*, and that the part in regard to insanity conflicted with his Honor's rulings.

The *District Attorney* held that that case illustrated what was the state of the law in all cases of homicide on the ground of adultery, whether the parties were bond or free. He referred to Archibald's Criminal Practice, Vol. II, page 13, and to Hill's South Carolina Reports, Vol. II, page 116. He contended that the extent of cooling time was necessarily a question of law, and must be determined by his Honor.

*Mr. Phillips.* That would make the Judge the trier of the whole case.

The *District Attorney.* It was material for His Honor to inquire whether there was cooling time between that hour when his wife's infidelity was communicated to the prisoner and the time when he shot down Key; did it involve such a space of time as that his passion ought to have ceased? That was the material inquiry—not whether the passion actually did cease.

*Mr. Brady* would ask the *District Attorney* to answer this question. If the Judge was to pass on the question of provocation, of justification, and of cooling time, what was the jury to pass upon?

*April 18.*

*Mr. Ould.* I had been endeavoring when I closed my remarks on Saturday, to show that the facts offered in evidence on the part of the defense did not amount to legal provocation, much less to justification, and that the questions of provocation, justification and cooling time were mere legal questions. I had been interrupted, politely of course, by a question from Mr. Brady asking on what were the jury to pass if the Court determined the justification and the cooling time. It was the duty of the jury, I held, to pass upon the facts as connected with the killing and to apply the law as

enunciated by the Court. With reference to justification, provocation and cooling time, the Court has its peculiar functions and so has the jury. If there were no other questions in the case that was the fault of the case—one of the incidents of the case. If a man were indicted for poisoning would the learned counsel claim that evidence of justification, provocation, and cooling time should be given? Did not the law declare that in such a case there could be no justification, no provocation, no cooling time? The jury pass upon the truth of the facts offered; their sufficiency in law was a question exclusively for the Court. If the Court decided that they were sufficient in law, then the question of their truth went to the jury. But if the Court decided that they were not sufficient in law, then, of course, they did not go before the jury. It was the constant practice of courts to pass upon provocation, justification and cooling time.

The JUDGE. At a different stage from this, however.

Mr. Brady. We utterly refuse to enter into any discussion of any question at this time, except what relates to the particular points before your Honor for determination. We offered to prove habitual adultery; the objection was made to that. As to justification, provocation, and cooling time, we propose to be heard at a future stage, in asking the Court for instructions, and we mean to insist that the jury are judges of the law and the facts, but that time has not arrived yet.

Mr. Ould. I certainly misunderstood the arguments of the counsel if the questions of justification, provocation, and cooling time were not now before the Court.

Mr. Phillips. If the evidence has a tendency towards justification, that is sufficient.

The *District Attorney* held that it had no such tendency, for in law the facts amounted neither to justification nor provocation. He referred the Court on this point to Addison and to 6 Iredell 178 and 181, the *State v. John P. Creighton*. In the case cited by the other side (*Manning's case*)—the question of provocation was before the Court, and the Court then declared what would be and what would not be provocation. Did not every Court in cases of murder necessarily decide upon the sufficiency of the evidence to constitute legal provocation? Undoubtedly it did. Here the facts sought to be put in evidence were admitted, but the question was whether they amounted to a provocation or a justification. The same doctrine came up incidentally in *Selfridge's case* as to the effect which the law ought to give and which the jury must give to certain questions affecting honor and dishonor, and there the Court decided the question.\*

The proposition of Mr. Phillips that this evidence was competent for rebutting the question, he thought begging the question. Was the evidence of such a character on its face as would be a legal re-

\* See 2 Am. St. Tr. 544.

buttal of malice? If not, it was not competent. It had been also argued that the evidence was competent as affecting the question whether the passion was real or feigned. It was immaterial for the jury to find out whether it was real or feigned. It had been also argued that the deceased was giving the signal of adultery, and that therefore the evidence was competent, but if, as the prosecution held, the adultery itself was not a legal provocation or justification, how could an invitation to adultery be. The other learned counsel (Mr. Graham) had argued that the evidence of adultery was always properly before the Court; that was not so. In Iredell's case the evidence came before the Court whether the evidence of adultery could be admitted to reduce the grade of homicide and the Court rejected such evidence. He contended that where such evidence was admitted it was admitted only as part of the *res gestae*.

The JUDGE. In the case of Fisher, 8 C. & P., the whole case is detailed; the interview between the father and the man in whose house the crime was committed; it was committed more than once; and yet all the circumstances were gone into so that there it was impossible that the facts proved could have been part of the *res gestae*.

The *District Attorney*. The case in Volume 6 Iredell was precisely the kind of the case alluded to.

Mr. Graham. There all the proofs were got in.

The *District Attorney*. They were made a part of the evidence of the prosecution, and were put in as evidence connected with the homicide. He challenged the defense to point out a case where objection was made to such evidence and not sustained. It had been also set up here that the indictment recited that the deceased at the time of the homicide was in the peace of God and of the United States, and that he was not so in point of fact, and that therefore the indictment could not be sustained. The words are mere surplusage, and might have been omitted. They meant simply that he was under the protection of the laws of God and man, nothing more than that. If Mr. Key had been engaged in a riot, or if he had been blaspheming, would it be contended that any man might kill him?

Mr. Graham. In an effort to prevent him committing a crime, it would not be murder to slay him.

The *District Attorney*. Would it be proper to kill a man to prevent him committing an assault and battery?

Mr. Graham. I take the ground that if a man assaults me, I have a right to resist him to the death.

The *District Attorney*. That depends altogether on circumstances.

The JUDGE. It would depend on the nature of the attack.

The *District Attorney*. The testimony in regard to the handkerchief did not connect the parties with any adulterous intercourse; this was therefore not a proposition to continue evidence already partially given, but to give new evidence on a distinct point. It

was for the Court and the Court alone, to pass upon the nature of the evidence offered. It was only for the jury to pass upon the facts allowed to be given in evidence. Trial by jury was a creature of the common law, and the Constitution of the United States gave to the arraigned the privilege of trial by jury in accordance with the course of the common law and in no other way. The common law had been announced by Hale, and Foster and Gast and others, and what he contended for now was one of the principles of the common law. It had been alleged by the defense that the case now presented was analogous to that of Jarboe. No such analogy existed.

In the case now before the Court the prisoner made the declaration at the time of the homicide, "He has defiled my bed." In Jarboe's case the question was by the prisoner to the deceased, "What do you intend to do?" and the answer was, "You will see what I intend to do." That was a matter which did not explain itself and therefore it was right for the Court to allow the evidence to be given to explain the declarations. Here the declaration of the prisoner explained itself, and therefore no evidence was necessary to elucidate it. The facts themselves carried no further impression to the human mind than the expression itself does.

There was another distinction between the two cases. In Jarboe's case, the expression was made use of both by the deceased and the prisoner; here no expression was made use of by the deceased. His Honor, in Herbert's case, drew a distinction between the declarations made by the deceased and those made by the prisoner, otherwise a party might manufacture testimony in his own case, while no such objection could possibly apply to the declaration of the deceased. He insisted that the instruction of the Court in Jarboe's case applied to this case here, namely, that the facts did not justify the act, or constitute a legal provocation, and that the killing was murder. In regard to the question of insanity, his Honor's rulings hitherto had been that no declarations made by the other parties to the prisoner could be admitted as proof of insanity, and on that ground the evidence must necessarily be ruled out. What, then, was left as competent evidence in law? Nothing but that the prisoner was witness to the adulterous intercourse between deceased and the prisoner's wife.

The last ground on which this evidence had been urged was on the ground of its being *res gestae*, that it was competent as explaining the declaration of the prisoner that the deceased had violated his bed. The declaration itself was part of the *res gestae*, and was receivable, but the evidence of the truth of the declaration was not *res gestae*, and was not receivable. As well might the United States go into a long evidence of the manufacture of firearms, and detail the manner of making the pistol which had been offered in evidence in this case. But, say the defense, the declaration of the prisoner show his nature, and this evidence ought to be received, because it explained the declaration. That raised the direct question whether the fact of adultery constituted a legal

provocation or justification, and he has already shown that it did not. It had been hinted, rather than argued, on the other side, that the prisoner, at the time of the homicide, was but defending his wife from future advances of the deceased.

The law, however, says that for the taking of human life such an excuse affords no justification or excuse. Nothing but an attempt to commit a felony can excuse the taking of life. It must be distinctly shown that the deceased was at the very time attempting to commit a felony. But an invitation to adultery does not rise even to the dignity of a trespass.

The JUDGE. Five propositions are stated as the basis of an offer to prove the fact of adultery in this case, and that that fact is known by the prisoner. The proposition is not to introduce evidence of adultery as proper under all or any circumstances, but whether, under the existing state of the evidence already given, the defense are entitled to adduce further evidence than they have already given to the jury. It is a question of competency of evidence for any purpose; what may be its legal effect is not the inquiry.

That the Court may be called upon to give an opinion on before the trial terminates. But I will not anticipate it. That opinion must be founded on all the evidence, and can be properly investigated when the evidence on both sides is closed. A great mass of testimony has been received going to show the adulterous intercourse, the frequenting by deceased of the immediate neighborhood of the defendant's house. The exhibitions of a handkerchief! What did they mean? Have not the jury a right to understand what they meant? By themselves, they might be regarded as weighing very little, or as having more or less influence on any particular point raised. The jury must pass on them, and on all the evidence. Can they do so without a full knowledge of what that testimony imports?

At the time of the homicide the prisoner declared the deceased had dishonored his house, or defiled, or violated his bed, for all these expressions have been used by the different witnesses examined. This declaration is a part of the principal fact. It is important to the jury to have it explained, and it is the right of the defendant, in all justice, to have it explained. Jarboe's case has been referred to as a decision rendered by this Court on a great deliberation. It is one from which I am not disposed to depart. In that case considerable testimony having been given, it was proposed to prove what passed at an interview between the witness, who was the father of the prisoner, and the deceased, and the prisoner himself, in regard to the engagement of marriage. This interview, it will be observed, was two or three months before the homicide. It is said, however, that the expression of the prisoner here at the time of the homicide that the deceased had defiled his bed, explains itself; and that it is not susceptible of any further elucidation. It was certainly not stronger than this case of Jarboe, where the prisoner asked the deceased if he was going to marry the unfor-

tunate girl, his sister, and he said, No; you see, or you will see, what I am going to do.

The plain English of that is, "I am not going to marry her." In this case, it is true, the expression used by the prisoner is one that might be ordinarily understood in a particular sense, but men may have various ideas of phraseology and the jury are to pass on this case on the evidence. That declaration, to be sure, is in proof by the United States, but still there may be a different construction put upon it by one man from that put upon it by another. Be that as it may, in order to insure perfect understanding by the jury, what was meant by that declaration, I think on that ground also, the evidence is admissible, the Court reserving of course, an opinion on all the evidence until in accordance with the ordinary course of practice here, that opinion is asked in the shape of what lawyers here called prayers. I am of opinion that the evidence is admissible.

*Mrs. Nancy Brown.* Was sufficiently acquainted with Mr. Key to know him; the last time I saw him was on the Wednesday before he was shot, when he went into the house on Fifteenth street; saw him take a key out of his pocket, unlock the door, and go in; he came out in about an hour; am acquainted with Mrs. Sickles; I saw her go backward and forward often; saw her go in and then out the back way; he would go to the back gate and let her out, and then would come out of the front door; they were in the house about an hour. Saw him go in three times before, when he unlocked the door and took the key from his pocket; saw Mrs. Sickles go with him and have hold of his arm, except the Wednesday before Mr. Key was killed; saw them go in three times within three weeks. Key came up to my door in October; rode up and asked me whether the house was occupied. I said no. Asked me who the house belonged to; told him to a colored man named John Gray, and he lived somewhere on Capi-

tol Hill, and that the colored people could give him all the information. He came about three weeks after that, and tied his horse to my tree. I asked him whether he did not know that that was against the law. He said I won't tie it there any more. He said, I rented this house for a friend of mine, and want to see how it is situated. He then untied the horse and went away. I never spoke to him any more. I noticed on that Wednesday, he had a shawl when he went in on his left arm; had none when he came out. Saw a little white string tied to the upstairs shutters, so that when the wind blowed it would swing.

Mrs. Sickles had on a small plaid silk dress, which she wore open, and she had a black Raglan—a cloak you know—fringed with bugles, and a black velvet shawl with lace; saw her in a brown dress, like a traveling dress the Wednesday she went in and out the back way. In entering the house the back way the mud was that depth (four or five inches). The alley was

not paved. Never saw anybody go in but themselves; sure I did not.

To *Mr. Graham*. Saw them go up and turn back. They saw two policemen standing down K street. They were at the gate. I was at my gate. They went up Fifteenth street as far as I could see them.

*Mr. Stanton* requested that the prisoner might retire during this examination. *Mr. Sickles* accordingly retired, accompanied by an officer.

*Mr. Graham*. Did you see them come back that day? Not likely. They were so scared they ran away.

*Cross-examined*. Live next door but one to John Gray's. Knew it was *Mrs. Sickles* because I inquired, and was told; asked different people, and they all told me it was her, and when I saw her at her own house, I knew it was the same person. She sent for me to identify her, whether she was the same person; it was the Tuesday after the killing. Saw them go into the house three times, and at another they only came to the gate, as I said before. It is not likely they returned that day; not likely, gentlemen; I did not watch more after that; I knew they were not so foolish. After they seced the police; not likely after that. The white string was put out every time that he came first and made the fire. Know that it was he who made the fire because there was nobody else to make the fire, and because I saw him go down and fetch the wood. Never saw Key go there by himself except the first time when he came about the house; saw the

string out of the window three or four times; if I had looked oftener I might have seen it oftener. I knew it was the signal, of course. She was with him every time I saw him but that once; I saw him go down the yard for wood four or five times; of course when I saw him go down for an armful of wood he was there.

To *Mr. Ratcliffe*. It was *Mr. Mann* who called for me to go and see *Mrs. Sickles*, and there I identified her as the person whom I used to see go to that house; the shawl was shown to me the next week, week after the death of *Mr. Key*; the other man, I never could speak his name (*Mr. Gentry*), was there when the shawl was shown to me; I could not identify the shawl, but I stated at that time that I thought it the same shawl; I think it now the same shawl, but I could not swear to it exactly because there are so many shawls like it.

To *Mr. Brady*. I never thought she was no lady when I saw her come to the house; thought she was a servant girl; I saw her getting out of a carriage in the avenue and asked a gentleman who she was, and he told me she was *Mrs. Sickles*; also saw her in the market.

To *Mr. Carlisle*. Saw the policemen go in the same day the shawl was shown to me; think the house was opened the Monday after *Mr. Key's* death; did not see people go in; saw them at the door; have no knowledge of any person breaking into the house. I could hear a noise of some persons inside, but I could not see them; this was two or

three weeks after Mr. Key's death.

*Mr. Brady* exhibited to the jury the lock taken off the front door of the assignation house in Fifteenth street, and showed how it was fitted by one of two keys found in the pocket of the deceased. The second key belonged to the door of a house in C street.

*Chas. Mann.* Am a policeman; am acquainted with the house in Fifteenth street; Mr. Magruder and Mr. Ratcliffe and a third person were present; found this shawl there, a pair of gloves, a comb and some cigarettes; saw some chunks of wood there; found a shawl in the bed in the front room; this is the shawl; showed it to Mrs. Brown, the last witness; Mrs. Brown went to the house of Mrs. Sickles with me for the purpose of recognizing her.

To *Mr. Brady.* On the first floor of the house there were two rooms and a kitchen; they were furnished in plain style; on the second story there are two rooms communicating with each other; in the back room there was a bedstead and bedding, basin and pitcher, and perhaps a bureau; the bed looked as if it had not been made up for a week or two; there were soiled towels lying about; the shawl was found in the bed in the front room; that bed looked as if it had not been made up for some time.

*Mr. Ratcliffe* related the circumstance of the visit to the house. We found up there a bed all in confusion and on that bed we found a shawl; we found a pair of gloves on the mantel and a parcel of cigarettes. I think

Mr. Key resided in C street, about a mile from the house in Fifteenth street. Mr. Key was a widower, with four or five children. Mrs. Key had been dead some four or five years.

*John M. Seeley* (recalled). My attention was first called to the visits to the house in Fifteenth street by Mr. Key and a lady between the middle of January and the beginning of February last. Noticed Mr. Key and a lady go there frequently. The last occasion was February 15th. Mr. Key's outside garment was usually a steel-mixed gray sack, and on other occasions a plum-colored coat. Did not notice a shawl. Saw Mr. Key put a key to the lock and walk in. As I passed the door of the house in Fifteenth street, they stopped and went into the house. The lady as she went in, drew up her veil and looked at me. He unlocked the door; presume he took out the key. Saw them come out of the house that day; they were there about an hour or an hour and a half. They came out separately—she first; both came through the front door; some four or five minutes elapsed between her coming and his. She passed on toward her home, and he passed in the opposite direction. The only Sabbath I saw them go into the house was on the 20th of February. It was about one o'clock I saw him enter, but no lady with him; immediately went up to a back room in the third floor of my house and looked out the window; saw the same lady come up through the alley; saw Mr. Key come to the back door and walk down toward the gate, and they returned together to the



house; that was Sunday, February 20th. They stayed on that occasion, perhaps, an hour. The lady came out the way she went in, but I did not see how Mr. Key came out. Also saw her pass into the house the Wednesday or Thursday before Mr. Key's death; she passed in by the back gate; that was somewhere about two o'clock. Did not see Mr. Key there at all that day. The house had been of unfortunate repute when I went to the neighborhood. The parties left and the owner occupied it a short time; after he left it remained unoccupied till I saw Mr. Key and the lady go there. I ascertained who the lady was by going and seeing whether she was the person it was said she was, about ten days after the fatal occurrence; went to her residence and saw she was the identical same person; went in company with my wife and daughter, who had also noticed them; there was a gentleman present named Hart; the lady introduced as Mrs. Sickles is the person that came to the house in Fifteenth street.

To *Mr. Ould*. I passed that house daily; saw this lady's face three or four times, perhaps; think I saw her face every time she visited; her face was uncovered by a veil at all of the times except the time when she threw it up; when I was looking from my back window she was perhaps seventy feet from me; the window was open and I saw her features distinctly; she appeared as if she was looking round to see whether anybody was looking at her; she did not throw her glance at the window where I was; on the 23d or 24th, when I saw her

going through the alley on K street, I was at my own back gate; think she observed me then. She made no effort to conceal her features, but went straight up to the door; she had no veil over her face; if I had met her walking on the avenue think I would have recognized her immediately; had seen her passing about the city prior to that, and was told she was Mrs. Sickles; was told by hearsay that it was Mrs. Sickles; to satisfy myself that it was, I went to her house to see her, and that fully satisfied me.

To *Mr. Graham*. The walking was very bad, miry, and on occasions when she came to the house; the alley-way is a very deep, marshy, muddy alley, so much so that the carts with coal could hardly get in; thought it an extraordinary place for anybody to go; the time I visited Mrs. Sickles' house was about a week after Mr. Key's death.

*Mrs. Sarah Ann Seeley*. Am the wife of John M. Seeley; saw Mr. Key and Mrs. Sickles three different times on the 16th of February; the first time they were passing about the street, and the police had a warrant against him; saw Officer Ginnity there, who stopped them in the evening; when I saw them it was dusk; they were passing Fifteenth street as if going home; the first time I saw him on Mr. Gray's premises, he was carrying wood in his arms; the next time he was in the alley with a small roll in his hand, twisted, which might be paper; I once saw her on K street; saw her come through the alley on Wednesday before Mr. Key was killed; this

was about one o'clock; can't say how long she remained there; did not see her come out of the house; never saw her enter there but once, and then she went in alone; she was dressed in black silk; the square in the silk was dark brown with narrow stripes somewhat darker; cannot say whether they were black or bottle green; she had on a large velvet shawl, with twisted silk fringe and bugles, black bonnet and feathers, and a short black lace veil; the first day I saw her she wore a white and black silk and worsted dress, and she always had on the same shawl; cannot say whether he wore an overcoat or shawl; had a small cane and keys in his hand which rattled. A week after the decease of Mr. Key I went to Mrs. Sickles' accompanied by my husband and daughter, and there identified her as the same; was introduced to Mrs. Sickles by Mr. Hart; she recognized us immediately after we passed into the room.

*To Mr. Brady.* Did not know how long the house had been occupied. I knew it was occupied when I saw smoke coming from the chimney. Did not see anybody else coming there after Mr. Key began to come there.

*Cross-examined.* She always wore a splendid shawl; black velvet, silk fringe, with bugle trimmings; it was a large shawl; it came down low on her person. Mr. Hart asked me whether Mrs. Sickles was the same person. I said I thought she was. Mrs. Sickles was in her chamber. She first recognized my daughter.

*James Ginnity.* Am a police officer. Know Mr. Key and Mrs. Sickles. They came down L

street to Sixteenth, then went up to K street and up Fifteenth street, north of L; I stopped to look after them. Mr. Key looked behind; he might have been in a little store on the corner, he peeped out, and drew in again; he came out and walked down the street, and I stepped up and spoke to him; the lady was standing with him. He had a small brass key twisting in his fingers; it was a key like this (a key in the lock belonging to the door). There was a great number of people on the steps of the doors and all along these streets engaged in observing them; did not at that time know it was Mrs. Sickles. After the decease of Mr. Key, was requested by one of the counsel for the defense to go and see if I could not recognize her; went to Mr. Sickles' house. Mr. Hart asked me upstairs; saw Mrs. Sickles, and recognized her as the lady I saw on Fifteenth street.

*Matilda Seeley.* Am sixteen; knew John Gray's house; saw Mrs. Sickles go in there once two weeks before Mr. Key's death; she went in alone by the alley; had seen her in company with Mr. Key in that neighborhood; saw her twice one day; the first time between eleven and twelve, and the second time between three and four; saw Mr. Key go in once by the back way; afterwards saw Mrs. Sickles at her house and she recognized me.

*John B. Haskin* (recalled). A few days after Mr. Key had called at my house to converse with me in regard to some correspondence, Mr. Sickles was called to New York on business; before going, he came to my

seat in the House of Representatives, and desired me, as having been familiar with himself and wife for years, to drop up occasionally and see his wife and see if she wanted anything; the day following I drove up to his door, helped my wife out in a hurry, rushed upstairs, opened the front door of the little library without knocking; on entering the little library, I found Mrs. Sickles and Mr. Key seated at a round table with a large bowl of salad on it; she was mixing it; there was a bottle of champagne and glasses on the table. I excused myself for my abrupt entrance; Mrs.

Sickles got up, blushed and invited us to take a glass of wine with her; after sitting there for a moment I hastened away with my wife; on entering the carriage, or immediately after entering it, my wife said that "Mrs. Sickles was a bad woman." Think Mrs. Sickles on that occasion introduced my wife to Mr. Key. Shortly after, in riding through the cemetery, near Mr. Corcoran's country residence, met Mr. Key and Mrs. Sickles in the cemetery; saw them at the theater once or twice, and once or twice on the avenue.

*Mr. Brady.* I propose to ask how, after this correspondence between Mr. Sickles and himself, Mr. Key described Mrs. Sickles—how childlike she was, and how innocent, and what paternal relations he occupied toward her; that she was a mere child, and that he looked on her as a father. Is there objection to that?

*Mr. Carlisle.* Certainly. I had not the slightest objection that Mr. Haskin should pronounce the judgment of a virtuous matron on the conduct of this woman in April, 1858, though not strictly evidence, but I do not see what Mr. Key's description of Mrs. Sickles has to do with this case.

*Mr. Brady.* It is difficult for the defense to conceive what line of remark or argument the prosecution may pursue as to the relations between these parties. We know that when the relations between a man and a woman are called in question, suggestions frequently are made about a husband being too confiding, too indulgent, too kind, and that is sometimes turned into a pretext in extenuation of the act of the adulterer. I desire to show that Mr. Key had communicated to Mr. Haskin, and intended Mr. Haskin to impress on the mind of Mr. Sickles that Mr. Key claimed to regard Mrs. Sickles as a young person who stood towards him in the relation of a child, and that he was almost in the situation denominated in law *in loco parentis*, and that, to prevent any possible suspicion on the part of Mr. Sickles, that he (Key) could have towards that girl anything but honorable intentions, he made this declaration which I refer to, and which was communicated to Mr. Sickles.

*The Judge.* It does not appear to me that anything Mr. Key said on the subject of his relations with Mrs. Sickles can be evidence on this trial.

*Mr. Brady.* Well, I have made the offer. It is understood and I do not propose to argue it.

*April 19.*

*Emanuel B. Hart.* Am Surveyor of the Port of New York. Have known Mr. Sickles twelve years. Have seen the witnesses that were examined yesterday—Mrs. Brown and Mr., Mrs. and Miss Seeley. Saw them at Mr. Sickles'. Mr. Ratcliffe suggested to me some persons would come that day to identify Mrs. Sickles and requested me to admit them. They came and I admitted them, and they saw Mrs. Sickles in my presence.

*John Thompson.* Was at one time coachman for Mr. Sickles; from 16th of November, 1857 to 4th February, 1859. Mrs. Sickles went from the house in the carriage alone. She went out mostly from 12 to 1, and remained out till 4 or 5 and sometimes 6 p. m. The dinner hour was usually five or half-past five. Mr. Sickles went away before twelve, and usually came back from four to five. Mr. Key always found Mrs. Sickles in the street. Could hardly mention a day that he did not meet us. He met us at the President's, Mr. Donaldson's, Mr. Gwyn's and Mr. Slidell's. Sometimes he would get into the carriage and tell me to drive through back streets. When he would meet us he would always salute Mrs. Sickles, and say, "good morning, madam." Sometimes he would remain on horseback, and sometimes dismount. He never got into the carriage at Mr. Sickles' door, and always but once got out before we got back to the house. He always got out at the Club House; knew him only once to come home with Mrs. Sickles. I have known Mr. Key to come to the house while Mr. Sickles

was absent in New York. He always came at dusk; knew him to be there every night almost. Sometimes I knew him to remain until late at night. At other times I did not know how long he would remain. He and Mrs. Sickles always remained in the study. The door was shut while they were there. There was a sofa in that room with its foot right at the door. Have known him to be there one night while Mr. Sickles was absent till one o'clock in the morning. He was always there when I went to bed at ten or eleven o'clock; do not know how long he remained on these occasions. There was no person in the room but Mrs. Sickles and Mr. Key. If there was any other gentleman in the house it is likely I would know it. The night he was there at one o'clock they were in the study. He came there at seven o'clock. There was no other visitor between these hours.

In May, I was going to bed about one o'clock. I went to the head of the hall stairs and met the seamstress. We thought the hall bell had rung, and Mr. Key and Mrs. Sickles came to the hall door and looked out. There was nobody there; they shut the hall door and locked it again; they went into the study, and I heard them locking the study door and the door that leads into the parlor. There are two doors in the study; heard them locking both of these. I stood a little while and heard them making this noise on the sofa for about two or three minutes. I mentioned to the girl that they were making a noise; the girl ran away; she would not hearken to me—as it was not language

suitable for her to hear. I heard them for about two or three minutes. I then went to bed; I knew they "wasn't" at no good work; had been out that night, and came in at 12 o'clock. I knew they were, and it was the conversation among us all; have seen Mr. Key come round the square and pass the house while Mr. Sickles was in the house; perhaps an hour after he would come up when Mr. Sickles had gone out and then he would come in; he never came in the house while Mr. Sickles was in the house except on reception days; he always rang the bell when he came to the door. They visited the Congressional cemetery two or three times, and two or three times the burying ground at Georgetown. These visits would be made between one and three o'clock. He would meet us somewhere in the street. They would walk down the grounds out of my sight, and be away an hour or an hour and a half. Then they would come back and drive away. There was only one time that Mr. Key rode with Mrs. Sickles in the carriage to the Congressional burying ground; another time he rode out on his horse, tied the horse to the railing, helped Mrs. Sickles out of the carriage, and walked down the burying ground; they stayed an hour; another time I brought Mrs. Sickles in the carriage alone, and when I got there I saw Mr. Key's horse there; a colored man came up and handed her a letter; she took the letter and walked down the graveyard. Mr. Key came afterwards in a carriage and told his colored man to take the carriage home; he

then followed her down the burying ground, and they were there for about an hour. Mr. Key on coming back went off on his horse across the country, and I drove Mrs. Sickles home.

To the *District Attorney*. Every time Mrs. S. rode out Mr. Key met her; there might be some days he did not meet us, but very few; we drove out nearly every day. When Mr. Sickles was at home he visited on reception days, but otherwise I never knew him to visit while Mr. Sickles was at home; he usually visited in the afternoon. Whenever Mr. Sickles was away, Mr. Key was there; always noticed that after I drove Mr. Sickles away Mr. Key always came to the house afterwards.

To *Mr. Ould*. Orders to drive in back streets were always given by Mrs. Sickles; Mr. Key was always in the carriage at the time.

To *Mr. Carlisle*. I always got orders from Mrs. Sickles to drive to those houses where she visited and we always met Mr. Key at one of the houses or in the street. I drove her to Mr. Key's house in C street; I left him there as we came from the cemetery, but she did not go in.

*G. W. Emerson*. Am a butcher, Mrs. Sickles had been dealing with me for two sessions of Congress; have seen Mr. Key in her company, and on Thursday previous to the tragedy; at an unusual hour for her, between eight and nine o'clock; she came to the bench and gave me the order; she asked me how much it came to, and then handed her portemonnaie to Mr. Key, saying, "Pay Mr. Emerson;" he took a ten dollar gold piece out

and handed it to me and I gave the change. It was the 18th of February.

*John Cooney.* Am coachman of Mr. Sickles since the 8th February; took the place of John Thompson; on the second day I went to live with Mr. Sickles was driving Mrs. Sickles in the coach; Mrs. Sickles rung the coach bell; I drew up and Mr. Key got in; I drove them to Douglas' greenhouse, and from there down the avenue; we met Mr. Key afterwards in some of the back streets, when he would get into the carriage; he got out before we reached Mr. Sickles' house; up to Mr. Key's decease I usually left the house at one o'clock, or a little after; pretty much every day saw Mr. Key; he never went from Mrs. Sickles' house in the coach, or returned with her; he would join her on some part of the journey; he met her pretty much at Douglas' greenhouse or at Taylor & Maury's book store; she was generally there before he was, and then he would enter her coach; never saw him in her house; saw Mr. Key on the Sunday he was

shot, and on the Thursday before—it was about five o'clock—at Mrs. Greenhow's; there were in the coach Mrs. Sickles and Miss Ridgely; Mrs. Sickles visited Thompson's first; I saw Mr. Key come in afterwards; left Thompson's and went to Gov. Brown's, and she, in not many minutes, followed him; I drove them to Mrs. Greenhow's; Mr. Key joined them there; he stayed there an hour and a half or so; drove them to Fifteenth street, and drove Mrs. Sickles and Miss Ridgely home; can't tell where he went.

*Mr. Wooldridge* (recalled). *Mr. Brady* handed him an envelope and letter, asking whether he had ever seen them before. Yes. On the 25th February saw them first, at the Capitol. They were shown me by Mr. Sickles. He read all of the letter except two or three lines. He could read no more.

*Mr. Brady* proposed to read that letter.

The COURT decided it was admissible. The letter is as follows:

"Washington, Feb. 24, 1859.

"Hon. Daniel Sickles—

"Dear Sir: With deep regret I inclose to your address the few lines, but an indispensable duty compels me so to do, seeing that you are greatly imposed upon.

"There is a fellow, I may say, for he is not a gentleman, by any means, by the name of Phillip Barton Key and I believe the District Attorney who rents a house of a negro man by the name of Jno. A. Gray situated on 15th street between K and L streets for no other purpose than to meet your wife, Mrs. Sickles; he hangs a string out of the window as a signal to her that he is in and leaves the door unfastened and she walks in and sir I do assure you.

"With these few hints I leave the rest for you to imagine

"Most respectfully,

"Your friend,

R. P. G."

*Mr. Brady* proposed to show by *Mr. Wooldridge* the declaration of the prisoner immediately before leaving his house for the scene of the affray in which *Mr. Key* lost his life, as tending to exhibit the prisoner's condition of mind, and as warranting the inference that he was not legally responsible for the act.

*Mr. Ould* did not see how this could, on any ground, be received as evidence. It was contrary to the rule, and would be opening the door wider than on any previous occasion.

*Mr. Brady.* *Mr. Magruder* will show the authorities.

*Mr. Ould.* I do not propose to discuss it.

*Mr. Magruder* said that it seemed to be the desire of the other side to suppress the truth, while the constant purpose of the defense was to bring out all the facts and circumstances, to enable the jury to pass upon the case intelligently. The case for the prosecution was conducted, he said, as if your Honor were a Minos or a Rhadamanthus sitting to administer some brutal code in the regions of Pluto.

The JUDGE. This argument is one of law.

*Mr. Carlisle.* So far as we are concerned, we are quite willing that counsel should be allowed to express his views of how the case should be argued and conducted, and he is quite safe in supposing that our views will probably never coincide with his.

*Mr. Magruder* called the Judge to witness that he was only speaking in reply to the remarks made in the course of the prosecution. There were here two prosecutors—a public and a private one. That was rather an unusual spectacle in this courthouse. Had he not the right to speak of the gentleman associated in the prosecution (*Mr. Carlisle*) as private prosecutor? It was a notorious fact that the Chief Magistrate of the country, the President of the United States, was applied to to employ additional counsel to aid the prosecution, and that he declined to do so.

The JUDGE. *Mr. Magruder* do not refer, if you please, to the Chief Magistrate of the country. He has nothing in the world to do with this matter. It is a matter of argument on a law point.

*Mr. Carlisle.* The gentleman means to demolish the law point by commenting on one of the counsel for the prosecution. That is a novel style of argument. I think the gentleman had better content himself with answering my arguments, rather than harping at my presence.

*Mr. Magruder.* The evidence was offered as bearing on the prisoner's state of mind, and in that as well as in other points of view, the evidence was admissible.

The District Attorney. It is not my purpose to discuss the question at all. It had been already sufficiently discussed. He simply arose for the purpose of making a remark. The motives which actuated the prosecution had been already frankly stated. He was surprised that a gentleman would rise in this place and say that the prosecution had suppressed the truth and suggested falsehood. If he believed that, and still expressed high personal regard for the

counsel who conducted the prosecution, the confession itself was humiliating.

*Mr. Magruder* explained that he had said the prosecution was carried on the basis of a suppression of the truth, and suggesting falsehoods by the technical objections raised.

*Mr. Ould* also explained that the remarks which he had made in reference to the theatrical organization of the defense, including a gentleman outside of the profession—the Rev. Mr. Haley—were made in a playful spirit, and he was surprised that they had not been taken in that spirit.

*Mr. Magruder* was glad the gentleman had had an opportunity of making the *amende honorable*.

The JUDGE. It is proposed to prove what the prisoner said on first leaving his house, and shortly before the killing. Declarations of a defendant are never evidence for him, unless when they are part of the *res gestae*, or are made evidence by the United States. The length of Lafayette square is well known to the jury and counsel; and, in my judgment, the distance is too great to allow this declaration to be given as part of the *res gestae*. There is but one point of view in which the declaration can be received. That has been made one of the aspects in which it is presented to the Court. It is as to the insanity of the prisoner, or as tending to prove insanity at the time the act was committed. As far as the declaration may go to show that, I think it may be evidence. The acts and declarations of a man alleged to be insane are the best possible evidence of insanity; and if these declarations are offered for that purpose, I do not feel at liberty to reject them. But they are rejected as part of the *res gestae*, and must be submitted to the jury simply as evidence of the insane condition of the prisoner at the time, and for no other purpose; that is to show that the prisoner's mind was in an unsound state. The declarations of a man up to the moment of killing, or after, may be evidence of insanity, or may not be. Such evidence was received in the case of Day, in this court, extending through a period of some months, and up to the very moment of killing.

*Mr. Brady*. Yes, your Honor; I do not know how else in the world to judge of a man's insanity except by what he says or does.

The JUDGE. There is no way of proving it so well as by one's acts and declarations. Counsel understands that this is received on that ground only.

*Mr. Brady*. We understand your Honor perfectly.

*Mr. Wooldridge*. Mr. Sickles, after the waving of the handkerchief by Mr. Key, remarked, "that fellow who has just passed my door, has made signals to my wife." Mr. Sickles read all the

letter except the last two lines to me, and then handed it to me. On Friday afternoon, after gas light, I went to the premises on Fifteenth street; mentioned to Mr. Sickles that I had obtained



the consent of parties living opposite the house to occupy a room, and that these parties told me the lady was last at Gray's house on Thursday of that week before I was there, and was with Mr. Key; had discovered that I had made a mistake, as it was Wednesday and not Thursday the woman was there, and this I told to Mr. Sickles; then gave him a description of the dresses she wore. Mr. Sickles recognized the apparel of his wife, and it appeared at one time to convince him it was his wife who had been there; told him the lady had come there two or three times a week. That Mr. Key would come first, go into the house, leave the door ajar, and then she would slip in. Previous to this a towel or something white would be put out at the bowed window, and by this parties in the neighborhood knew Mr. Key was in the house, and that the lady would come from that fact; told him Mr. Key had said that he had hired the house for a Congressman or a Senator, and that a load of wood, already sawed, had been brought there and carried through the entry to the yard; had no knowledge of the fact myself. I could not meet a person who knew my business in going into that neighborhood who could not give me some information on the subject. Mr. Sickles said his hope was that it was not his wife, because he had made inquiry and found that on Thursday she could not have been there, but when I corrected myself and told him it was on Wednesday, and not Thursday, it unmanned him completely.

*Cross-examined.* The anonymous letter was exhibited to me

by Mr. Sickles about one o'clock on 25th of February, Friday. It was in the Capitol in the rear of the Speaker's chair. Mr. Sickles said, as he approached me, taking the letter out of his pocket, "George, I want to speak to you on a painful matter. Late last night I received this letter." He then read all but the two last lines, burst into tears, and handed me the letter. Before I opened it, he said he generally threw anonymous letters aside, but, as in this the facts could be proved or disproved so easily he thought he would investigate it. He added, he went in the morning of that day to the neighborhood as described in the letter, and found that the house had been hired by Mr. Key from the negro man Gray, and that a lady was in the habit of going there. He further said, "My hope is that this is not my wife, but some other woman. As my friend, you will go there, and see whether it is or not." He was very much excited, so much so that he put his hands to his head and sobbed in the lobby of the House of Representatives. He rushed from the sofa on which he was sitting and went into another room in a corner. He said, "Get a carriage, we'll go, and I'll show you the house." I called a carriage, when we entered and drove to Eleventh street. He showed me Gray's house. I left him at the Treasury building. During the ride I said I would make the examination. Made up my mind to go and take a room in the vicinity of the house to see whether it was Mrs. Sickles or not. When he showed me the letter on Friday he put his hands to his head and sobbed audibly. I parted

from him at the Treasury about 2 o'clock.

*Mr. Carlisle.* Are you aware of the fact that on Friday at that hour Mr. Sickles addressed the House of Representatives? I am not aware of that fact. Are you aware that on Friday evening Mr. Sickles revised and corrected his speech? The scenes I have described took place on Saturday; his excitement was not nearly so great as it was on Sunday; it was on Friday at one o'clock that he showed me this letter; I did not take him into a private room on Friday; if I so stated, it was in mistake.

*Mr. Carlisle.* I was interrogating you about the circumstances of reading this letter on Friday, at one o'clock, and you described his placing his hands to his head and sobbing audibly, and that you took him into an ante-room. I did take him into the ante-room on Friday; his grief then was not so great as it was the next day; I am not aware of the fact that that same afternoon Mr. Sickles addressed the House, and revised and corrected his speech; I told him on Friday evening that I understood it was on Thursday that the lady was at the house in Fifteenth street; I was employed as a clerk in the House of Representatives; I was not aiding Mr. Sickles as a clerk this session; I ascertained from a colored man, the son of Mrs. Baylis, that the lady was there on Thursday; when I made that communication to Mr. Sickles he was in the lobby, at the rear of the Speaker's chair; it was between four and five o'clock on Saturday when I made the second report to Mr. Sickles; I ascertained the fact that the day

was Wednesday from Mrs. Baylis, the woman from whom I rented the room near the house. Went to his house on Sunday morning; Mr. Butterworth was present when Mr. Sickles said he saw the villain Key pass and make signals to his wife. Mr. Butterworth endeavored to calm him. Mr. Sickles' words were, "that he could not—the whole world or the whole town knew it." Mr. Sickles asked what would he do. Mr. Butterworth then said after hearing that the whole world knew it, "As a man of honor I have no advice to give you." Think that was all he said. He did not say that "as a man of honor you have but one course to pursue." Am positive as to that. Am not aware that Mr. Butterworth himself has admitted that he said so. My impression is that when he returned with the officers he had an overcoat on. At the interview, prior to the shooting, he had no outside coat or hat on. I had told him that morning I had heard from the servants that signals were made from the Club House; have no recollection about Mr. Sickles saying to Mr. Butterworth that while she had confessed everything she denied about the signals. Have no recollection about his asking Mr. Butterworth to accompany him to the Club House to see if Mr. Key had a room there. There was very little conversation after the burst about the handkerchief. I was so much affected by his grief and whatever he said was so broken by sobs, that I could not make out what he said. The steps to the front door are stone. I saw Mr. Butterworth go down as I was sitting in an easy chair

by the window. He was alone. He went up toward the avenue. Was not aware that Mr. Sickles was out of the house till he came back. Am not satisfied that Mr. Sickles went down those steps. It has bothered me since how he did get out. If he had gone down the front steps I must have seen him. Believe Mr. Sickles must have gone out by the basement door.

*April 20.*

*Mr. Wooldridge to Mr. Brady.* Did not receive a communication from Mr. Sickles on Friday night; did receive one on Saturday, after three in regard to exercising caution in the investigation; he told me I must be careful and not use Mrs. Sickles' name, for suspicion was worse than reality, and he had knowledge that his wife had not been there on Thursday; it was that which had depressed me in having to tell him that it was Wednesday and not Thursday that the lady was seen there.

To *Mr. Ould.* Rode with Mr. Sickles to the neighborhood of the house in Fifteenth street on Friday. He did not get out of the carriage or make inquiries; returned there about seven that night. Understood I was to see this lady when she came there, and ascertain whether it was his wife or not; had a conversation with the negro boy "Crittenden" and found that he was full of

knowledge about Mr. Key going there; carried the negro to see Mr. Sickles, presuming that he might wish to ask him questions. The negro did not know who the lady was. Did not get any specific or general directions at the second interview with Mr. Sickles on Friday evening; was acting on my first directions, which were to find out as his friend, whether this lady was his wife or not. After he had shown me the anonymous letter, Mr. Sickles and I drove to the neighborhood, and he indicated to me the house. He said he had been there that morning. He said his hopes were that it was not she.

In the note for me Mr. Sickles on Saturday afternoon said I should be cautious in my inquiries, about using the name of Mrs. Sickles, as the suspicion, if not proven or not true, was worse than the dreadful reality; that he made inquiries which assured him that it was not his wife who had been there on Thursday. When we drove to the neighborhood he told me that he had made inquiries and that the house was there, and that Mr. Key had rented it of John Gray; he did not say from whom he made the inquiries.

*Albert A. Megaffey.* Am a contractor; knew Mr. Key; was a member of the Club and met Key there.

*Mr. Brady.* Did you at any time have a conversation with Mr. Key in reference to Mrs. Sickles?

*The District Attorney.* We object.

*Mr. Brady.* We propose to prove by this witness: First, that shortly before the decease of Mr. Key the witness had noticed certain conduct—on his part—towards Mrs. Sickles, which led him to suggest to Mr. Key that the latter was observed to be over at-

tentive to her, in answer to which Mr. Key remarked, that he had a great friendship for her, that he considered her a child, and had paternal feelings towards her, and he repelled indignantly the idea of having any but kind and fatherly feelings towards her; second, that at a subsequent conversation in relation to the same subject, the witness suggested to Mr. Key that he might get into danger or difficulty about the matter. Mr. Key laid his hand on the left breast of his coat, and said, "I am prepared for any emergency."

*Mr. Ould* said that evidence of these conversations was inadmissible.

**The Judge.** It is proposed to prove in this case, by the witness on the stand, what Mr. Key said in relation to Mrs. Sickles; that she was a mere child, and that he looked on himself in some measure as a sort of parent, and that on his being remonstrated with and told that he might get himself into trouble, he said, putting his hand on his breast, he was prepared for any emergency that might occur. This is objected to on the part of the United States for various reasons. I do not perceive that the evidence tends to establish any point in controversy in this case. The declarations of deceased occurred some of them so long ago as last June, and the last of them a day or two previous to the 17th of February. How that tends to prove, even if it were material, that the deceased was armed on the 27th of February, some ten days after the last declaration, is a matter that does not strike me as being likely to follow from the introduction of the evidence. There is another ground on which it strikes the Court that the evidence is not admissible. It is offered in explanation of the conduct of the defendant, in the supposition that he had a right to suppose the deceased was armed, and that his conduct might be partly accounted for on that ground. This conversation might just as well have passed between any two gentlemen discussing the alleged intimacy between Mrs. Sickles and the deceased—it would be just as much evidence, if one had said to another: "These persons are misbehaving themselves, and if Mr. Key does not take care he will get into trouble, or into danger, or have his life taken;" that would be as much evidence as this. Because it does not appear that it could have influenced in any possible way the conduct of the prisoner, or could have had anything to do with any point involved in this case, I think the evidence not admissible.

*Felix McClusky.* Was in Washington on 27th of February in the neighborhood of Willard's. I followed to the scene of the killing. I saw Mr. Sickles ascending the stoop of Judge Black's house, the people running after him. In ten or fifteen minutes Mr. Sickles and Mr.

Butterworth came out and got into a carriage, and rode to Mr. Sickles' house. I walked to the house. By the state I saw Mr. Sickles in I thought he would kill every man, woman and child in the house. I thought even, that if he went upstairs he might injure his wife. I spoke with

Mr. Berret, the Mayor. I kept my eye pretty close on Mr. Sickles, and as he went upstairs I stepped up two or three steps to watch him. Heard either her or him give something of a groan or holloa, or something of that kind, and I thought I would not go up; do not think a person in the study could hear what was going on in the back parlor. The door opened once, and then I heard a buzz or confusion, but the door closed in a second, and then the noise ceased just as if it was a ventriloquist's trick. When I saw Mr. Sickles at Mr. Black's he looked like a man frightened to death, you know, with his hair over his face; had my opinion from the start that he was not responsible for anything he did.

To Mr. Ould. Stayed at Mr.

Sickles' house till he went to jail with Mr. Walker and Mr. Butterworth.

*John McDonald.* Was with Mr. Sickles as groom and footman on 10th February; saw Mr. Key in Lafayette square on Sunday; the last time before that was the previous Thursday; the last time he was coming out of the Club House with a shawl on his arm. He came up and shook hands with Mrs. Sickles. He first asked if she were going to the hop at Willard's; she said she would go if Dan would allow her; then he said he expected to meet her there; another remark he made was that her eyes looked bad, and she said that she did not feel well, or something like that; he then got into the carriage.

*Mr. Brady* announced that the defense had closed.

*The District Attorney.* Having been notified that the defense is going to close, I feel it proper to make this statement: When, at a certain stage of this trial, a certain piece of evidence was offered, the United States felt it incumbent on them to object. The objection was made and sustained. The reason why the objection was made was because, in the view of the prosecution, all evidence relating to any adulterous intercourse between the deceased and the wife of the accused was entirely incompetent. Your Honor has subsequently ruled that in certain aspects of the case evidence showing this adulterous intercourse could be introduced. That evidence has been introduced. I now state in frankness to the gentlemen on the other side, and will let them take their own course about it, that the evidence having been given with respect to this intercourse, the United States now waive all objection to the introduction of any evidence which the gentlemen may have tending to the development or proof of this adulterous intercourse; and they particularly waive all objection to the introduction of testimony offered on the part of the defense the other day in relation to the confession of Mrs. Sickles.

*Mr. Brady.* I am not prepared to make any specific answer to that deliberate and prepared suggestion of the prosecution, founded on reasons which, in their consultation, they undoubtedly esteemed to be sufficient, for I presume such a thing was not done without careful consultation; nor do I think that at this stage of the case, after having encountered in every step of its progress every spe-

cies of objection which the sharpest and most cultivated legal intellects could present against what we honestly esteemed to be relevant proof, we are called upon by any consideration of duty to the Court, to our client, or to the prosecution, to accept any proposition which the prosecution make. Nevertheless, I will imitate the example we are told prevailed with some of the aboriginies of the country, whenever propositions were made in the spirit of peace never to give an answer immediately, but to take time to give the proposition the semblance, at least, of being considered.

I will confer with my associates. But since the learned gentleman has referred particularly to this paper called a confession, which seems to be the prominent subject on his mind at this moment, I take occasion to say what I think is due to my client, that any publicity which this paper has found anywhere is not in the slightest degree attributable to him, but was in direct opposition to his expressed and consistent wish, as I know. I have no censure to apply to any party or person in relation to the publication of that paper. I have my own private opinion as to whether its publication was proper or not; but I know that my client, neither directly or indirectly, had the slightest connection with it, and I know that he regretted it was published. At the same time we all understand that a paper offered during the trial of a cause, which becomes a subject of discussion, and on which the Court makes a ruling, to which ruling exception is taken, becomes part of the record.

I ask your Honor's pardon for making that little statement, but it seemed to be an act of justice and propriety to make it. As to the proposition of my learned opponents it shall be considered, and at the proper time—perhaps at the opening of the Court to-morrow—an answer will be given.

#### IN REBUTTAL.

*Geo. H. Pendleton.*<sup>b</sup> Am brother-in-law of deceased. The second Monday after Mr. Key was killed made an examination of the premises of Gray; went to the front door and found it closed; the back door was locked; sent for locksmith; never gave a direction or made suggestion to the locksmith as to removing that lock at that time, or to anybody else; did not see anyone taking

off the lock; am not prepared to say the lock was taken off from the front door when I was there; if it was, it was without my knowledge. Some articles belonging to the deceased were transmitted to me from John A. Smith; they were said to have been taken from his person or clothes at the time or subsequent to the homicide; they consisted of the case of an opera glass, two

<sup>b</sup> PENDLETON, GEORGE, (1825-1889.) Born Cincinnati, O.; member U. S. House of Representatives, 1857-1865; Democratic Candidate for Vice-President, 1864; United States Senator, 1879-1885; U. S. Minister to Germany, 1885-1888; died at Brussels.

brass keys, a set of small keys, a pocketbook, in which were fourteen dollars and some cents, and a pair of kid gloves. I gave the small keys to Mr. Maury, who was appointed administrator of Mr. Key. On the Friday or Saturday following the death of Mr. Key I received an envelope containing one or more papers, with a card from Dr. Stone, saying he was requested by Dr. Miller to deliver them. It has been stated there were some cards and a card case; have no recollection

there were not; there was a paper which is in the envelope still.

*Colonel Charles L. Jones.* I visited the house in Fifteenth street, in company of Mr. Pendleton; I suggested to Gray he had better break open the door, but Mr. Pendleton thought it would be more dignified to get in by the aid of a locksmith; found no property of Mr. Key there; Mr. Pendleton gave no direction; paid no attention to the taking off of the lock.

*Mr. Brady.* A proposition was made yesterday by the government to the counsel of Mr. Sickles to admit what is called the confession of Mrs. Sickles as evidence. In response to that, I present the immediate and unanimous answer given by all my associates when the proposition was submitted to them; that is, we do not accept it, or deal with it; that the case of the accused is closed, and the prosecution must therefore pursue such course on their part as they may deem advisable.

*Francis Doyle* (recalled). Was present in the club house on the evening of the homicide; some one examining the clothes said

"here are some papers": requested Dr. Miller to take charge of them.

*Mr. Ould.* Did you observe Mr. Sickles at the time of the homicide?

*Mr. Brady.* Is that rebutting?

*Mr. Ould.* It was connected exclusively and solely to the issue of frenzy or insanity of the prisoner.

*Mr. Brady.* It was not rebutting, as this witness had been examined, and has stated everything he had observed Mr. Sickles say or do; if this were permitted it would allow all the witnesses for the prosecution to be recalled.

*Mr. Stanton.* On this indictment the state of the mind of the prisoner at the time the offense was committed was the point at which the prosecution started. The burden of proof was on them to show that he was a person of sound memory and discretion at the time the act was committed. They introduced their proof at a particular spot and particular time, and exhausted their proof. We have not called a single witness in answer to that evidence; we have shown other facts by other witnesses going to a question on which the burden of proof was on the prosecution.

The JUDGE. Considerable evidence having been given tending to show the condition of unsound mind of the prisoner, the United

States propose to prove facts and circumstances to meet that evidence. A large portion of the evidence for the defense has been to show this condition of the prisoner, and if it were not to be met because the United States did not introduce it in the course of the direct evidence on part of the prosecution, it never could be met. The counsel who last addressed the Court labors under a mistake in saying that the burden of proof of the insanity of the party accused is on the United States. It is not so; every man is presumed to be sane till the contrary is proved; that is the normal condition of the human race, I hope. I think the evidence receivable under any and every rule of law with which I am acquainted.

*Mr. Ould.* Mr. Doyle, state what was the appearance of Mr. Sickles at that time.

*Mr. Doyle.* When I came up to Mr. Sickles he turned round almost immediately; thought his manner was self-possessed, more than his speech indicated; there was more excitement in the expression than the manner.

*Mr. Brady.* I don't know to what extent you have given yourself to the study of men; have you ever been in a lunatic asylum?

*Mr. Doyle.* No, sir; I hope the judge will protect me.

*Mr. Ould.* He does not mean as an inmate, but a visitor.

*Mr. Brady.* I should beg your pardon did I insinuate that you had been an inmate of a lunatic asylum. I mention this by way of illustrating how small a cause will produce undue excitement. Everything you have stated has been with the most gentlemanly regard to truth. I meant, whether in such an asylum you have seen an insane person. No, sir.

*Mr. Brady.* If you visited an insane asylum and saw twelve persons dancing or sitting still, do you think you could tell who were insane or not? No, sir.

*Mr. Brady.* Have you ever

spoken to a person unmistakably insane? No, sir.

*Mr. Brady.* Among your acquaintances you find gentlemen high-minded, impulsive, quick to anger and resentment, but soon the excitement passes away. You happen to know some who are more excitable than those who flash their temper, and yet ordinarily exhibit composure. You will not undertake to judge of Mr. Sickles' temper? I did not undertake to say what was his state of mind. I merely gave my judgment.

*Albert Greenleaf.* Was at the club house when Dr. Miller was there. Some papers were put into the latter's hands; a pocket-book or card case was handed by a police officer; the papers came from either the vest or overcoat.

To *Mr. Brady.* Cannot state where the clothes were till I saw them in this officer's hands. He had only a coat and vest, not an overcoat.

*Jacob F. King.* Am police officer; went to the Club House and got there while the investigation was going on; stayed there till the body was removed. Saw Dr. Miller there, and saw some papers handed to him; took charge of the door of the room where the body was lying; the coat and vest of Mr. Key were



lying on a chair; the pants were on the body; think Mr. Snowden handed these papers to Dr. Miller; think they were taken out of the pantaloons; know there was a small white-handled knife taken out of the pockets; did not observe anything fall on the floor; had hold of the vest while I was examining the hole where the ball went through. Mr. Snowden appeared to be officiating a good deal about Mr. Key; think he took the papers out of the pocket; know he had a small memorandum book, and a small portemonnaie, which he took from the clothes.

To *Mr. Brady*. The articles I saw given to Dr. Miller were a memorandum book, portemonnaie, small knife and some papers.

*Mr. Ould*. Did you observe the manner and expression of Mr. Sickles at the time of Mr. Key's death? I thought he was exceedingly cool; as far as I could judge his manner was self-possessed; did not see any indication of great excitement, that I am aware of.

*Edward M. Tidball*. My attention was directed more to Mr.

Sickles' manner than anything else; I thought it was rather cool and deliberate; his face was somewhat pale, of course.

*Mr. Brady*. Have you ever visited a lunatic asylum? Not that I recollect. Have you ever talked with an insane person? I do not recollect that I have. Is it your opinion that the eyes of an insane person have a peculiar expression? I would not like to express an opinion on that. I had often seen Mr. Sickles before; do not think his face was habitually pale. If the expression of his eyes at the time of the homicide had been totally different from their ordinary expression, you would have noticed it, would you? I think not.

*Charles Howard*. Mr. Key was my brother-in-law; that is the paper which I produced yesterday and handed to Mr. Pendleton. It was shown to me by Mr. Pendleton, some four or five days after Mr. Key's death; Mr. Pendleton placed this and other papers in my possession; have made a cipher which appears to correspond with this, and I think I can read it. (Produces translation of it, made by himself.)

*Mr. Carlisle*. This cipher letter made its appearance yesterday, in the course of the cross-examination of Mr. Pendleton, and the counsel for the defense then asked that the letter should be preserved, to be kept on record in the case. The prosecution had proved all about the letter except the handwriting, and they now held that it ought to go to the jury. If it had any significance, or any relation to the cause, it was proper that the significance should be communicated to the jury by the witness who had deciphered it, and ascertained the key to it. He presumed it was not different from a paper written in a foreign language, and that the letter and translation should go to the jury together. The cipher letter was written by the substitution of one letter of the alphabet for another letter, and was unintelligible to anyone who has not the key to the cipher. He presumed that at this stage of the cause the prosecution should not be driven to proof of the handwriting; and, as it had been found on the person of

the deceased, it should go to the jury. The defense had gone so far as to show that there were other things on the body of the deceased, not first proved, but had gone no further; and he held that the prosecution had a right to take up the thread, and show that this was a paper having a meaning; whether admissible in evidence was another matter. He offered it now on the ground that the United States having put in evidence what matters were found on the body of the deceased, exclusive of this letter, and the defense having brought out this letter, the prosecution are entitled to show what it means.

The JUDGE held it to be the natural order of things that the objector should open and close, but the question really was whether the evidence is admissible or not. It was very plain to him that this was not rebutting evidence. The cipher letter and translation were therefore excluded from the case.

*Wm. Daw.* Am a police officer; was present at the house of Mr. Sickles shortly after the killing. Accompanied Mr. Sickles there from Judge Black's in a hack. Mr. Suit, Mr. Mann, Mr. Butterworth, Mr. Sickles went; Mr. Sickles went into the library, stayed a few minutes and had a conversation with some gentlemen; he wanted to go upstairs; told him he could not go up except on promise not to harm his wife. He said he had no such intention. Mr. McBlair told us we might depend on what Mr. Sickles said. He remained upstairs for about five minutes and came down with some letters in his hand. He went into the library and stayed there some time. Then he went into the parlor. We were in the house about half an hour altogether. Mr. Sickles went in Senator Gwin's carriage to jail, and our carriage followed immediately after. There was talk in the back parlor while Mr. Sickles was there; heard no unusual sounds; nothing like shrieks or moans. Mr. Sickles invited us to take some brandy just before starting for the jail.

To *Mr. Brady.* Went there as an officer to assist Mr. Suit, the

officer who made the arrest; we went to the house at Mr. Sickles' request; he wanted to arrange some business.

*James H. Suit.* I noticed Mr. Sickles after he reached the house. I stood at the library door leading into the hall a part of the time; think the door between the library and back parlor was open; would not be so certain that it continued open all the time.

*J. H. McBlair.* Was at Mr. Sickles' house on 27th of February, about fifteen minutes after the occurrence; Wooldridge and Miss Ridgley were there. Senator Slidell and myself went together; prisoner came in in about twenty minutes; heard no unusual noises in the back parlor; was considerably excited myself; some police officers told me they apprehended some of the mob would shoot Mr. Sickles, and Mr. Suit, putting his hand on what appeared to be a pistol, said he could shoot as well as any of them.

To *Mr. Brady.* Mr. Sickles, when he came downstairs, had papers in his hand. He was extremely calm; thought it the calmness of desperation; he ap-

peared to be suffering internally and to be endeavoring to restrain his feelings; thought him, and still think him to be a man of remarkable powers of endurance, or he never would have been able to withstand the relentless persecution extended to him; think he is a calm man; do not know that he has great command over his feelings; has great command externally; a man can be calm and have very powerful feelings at the same time.

*Col. Berrit.* Am Mayor of Washington; was present at Mr Sickles' house on the afternoon of the killing; I went there with the Chief of Police from the club house; found there two policemen, Mr. Wooldridge, Mr. Sickles, and perhaps, several other gentlemen; was shown into the library; there found Mr. Sickles, who remained there five or ten minutes, arranging some matters about the bookcase; I said he had better go to jail, where the preliminary examination would take place; he said that was what he desired; we, remained in the parlor for five or ten minutes; I mean Mr. Sickles, Robert J. Walker and myself; we soon after left for the jail. When Mr. Sickles discovered Mr. Walker in the parlor he said, "A thousand thanks for calling"; he exhibited much feeling and spoke of his child, and of his house being dishonored, and immediately thereafter took his seat on the sofa; he wept heartily. I remarked to him to be composed; he said he would be; his outburst of grief continued four or five minutes; he made a very distinct noise, indicative of deep grief; it was a hearty cry, and might have been heard in any

part of this room; accompanied him to jail, in company with the Chief of Police and Robert J. Walker; he seemed on the way to be restive, and made gestures as of salutations as he left his house; suggested to him that he had better not allow his attention to be called to the crowd; there was a brief examination at the jail; his manner was composed under the circumstances; did not see any exhibition of grief there such as I have described.

*April 22.*

*Joseph Dudrow* (recalled). As to Mr. Sickles' appearance and manner, it was rather cool; after he shot Mr. Key he walked away quietly; he put the pistol in his pocket afterward; saw nothing strange in his manner before he met Mr. Key; thought from his firing such a number of shots that he was rather cool.

*Mr. Delafield* (recalled). As to Mr. Sickles' appearance and manner, it was rather cool; after he shot Mr. Key he walked away quietly; saw nothing strange in his manner before he met Mr. Key; thought from his firing such a number of shots that he was rather cool.

*Francis H. Smith.* Am one of the reporters of the House of Representatives; on Friday and Saturday, 25th and 26th February, Mr. Sickles made speeches.

*Mr. Carlisle* read from the Congressional Globe the speech of Mr. Sickles, on the subject of navy yards, on Friday, 26th. Mr. Sickles' Saturday speech on the same subject.

*Mr. Brady* admitted that the corrections in the manuscript of Friday's speech were in the handwriting of Mr. Sickles.

*Mr. Smith.* Have examined the roll of votes; on Friday Mr. Sickles voted on the last vote, about 9 o'clock. Mr. Sickles voted on the last vote Saturday.

*Mr. Carlisle* informed the court that the prosecution had submitted to the counsel for the defense an offer of evidence, and were waiting for the result of their examination of it. This offer of evidence is connected with an inquiry into Mr. Sickles' own conduct, and particularly into the matter of his visits with a lady to Barnum's Hotel, Baltimore. The proprietor of that hotel is in court.

The JUDGE. For very obvious reasons the court will do no more than merely state his opinion on this point, and that opinion is that the evidence is not admissible.

*Mr. Carlisle* said that the judge having disposed of the offer of evidence lately made, nothing remained to be offered on the part of the prosecution except the testimony of two witnesses on the question of insanity.

*Mr. Carlisle* read the instructions which the prosecution would ask the court to give the jury.

*Mr. Brady* then read the instructions asked by the defense.

#### THE ARGUMENTS ON THE INSTRUCTIONS.

##### MR. CARLISLE'S SPEECH.

*Mr. Carlisle* stated the grounds on what he thought the instructions, asked by the prosecution, should be granted, and those asked by the defense, or some of them, should be rejected. The first point made by the prosecution, that if the homicide were willful and intentional, and was induced by the belief of the prisoner that the deceased had criminal intercourse with the prisoner's wife, nevertheless it was murder, if the jury believe that no violence or assault was offered by the deceased at the moment of the homicide, that presented hypothetically on the whole evidence the case of a willful and intentional

April 23.

*Richard Broadhead.* On Feb. 27 Mr. Haldemar and I called at Judge Black's; Mr. Sickles came in; called Mr. Sickles' attention to some mud on his boots, and remarked that he was unfortunate in crossing the street; he said he was and would take it off, and he stepped out to do so; after a while he came into the back parlor from the front parlor; Mr. Haldemar tendered him our services to go with him to the magistrate's; he thanked us; asked him if it was a bailable offense; he said he did not know, but that if all the facts were known it would be; he added, "For God knows I would be justified," or, "I could not help it." Someone asked whether Mr. Key was dead; Mr. Butterworth answered "yes"; Mr. Sickles muttered something about there being "one wretch less in the world," and seemed considerably excited. The carriage having been sent for, and his New York friends having arrived, Mr. Sickles left Judge Black's, and Mr. Haldemar and myself remained.

killing, without provocation in law. It also presented that a previous seduction of, or adultery with, the prisoner's wife is no provocation in law, even if the jury believe it, but the instruction further proceeds to guard the jury against the conviction of the prisoner if he were insane at the time of the killing. He did not know that he ought to consume the valuable time of the court in discussing the first proposition—namely, that a previous adultery is not provocation in law. The case of adultery as leading to homicide, wherever it is referred to in the book, is referred to solely in cases where the husband catches the adulterer *in flagrante delicto*. All the authorities confine it further exclusively to the case of instant killing. So that there are two points in it—one that the parties must be caught *in flagrante delicto*, and, second, that the homicide must be instantaneous. But there was no authority for saying that adultery had ever been held as tending to establish a justification of the act of homicide. They had heard reasoning and eloquence on the subject, but as yet heard no authority cited on the other side. They were told that every man was to judge, when he finds himself aggrieved, whether the law of the land gives him adequate relief; and if it does not, then he is remitted to his natural rights. In other words, they were told that there were two conditions in every society—a state of nature and a state of society *un imperium in imperio*. He would not argue that proposition; its mere statement was its own refutation.

It was also argued that human law must be in accordance with Divine law. He would not go into any argument on that subject, but would concede, for the sake of argument, the proposition. He denied, however, that the Divine law anywhere authorized the taking of a human life for any wrong by the person wronged. The Divine law did not make adultery as great a crime as murder. That sacred volume, on its sacred pages, had, from beginning to end, in letters of living light, denunciations of such acts of violence as this. And he further said that at no period of the Jewish dispensation was it ever held that the punishment of adultery by death was other than a judicial punishment. He denied that any text in the Bible countenanced the idea that he who had been injured was authorized to take the life of the adulterer. Dr. Paley, in discussing this sin of adultery, had referred to that most touching of all the incidents recorded in the New Testament—the occasion when the Scribes and Pharisees brought to the Savior the woman taken in adultery. They said to him, "Master, this woman hath been taken in adultery, in the very act; the law of Moses says that crime shall be punished with death; what sayest thou?" The Evangelist adds that they said this "tempting him." How tempting him? Tempting him to take upon himself some judicial authority, that they might have an opportunity of accusing him. Finally he gave them that notable answer, "Let him that is without sin cast the first stone at her." "Then one by one the Scribes and Pharisees slunk away, and the Savior turned and asked the woman, 'Hath any man condemned thee?' She said, 'No man, Lord.' Then said he, 'Neither do I condemn thee; go and sin no more.'" I, said

He, pronounce no judgment; I take upon myself no judicial authority; "go and sin no more."

If his Honor would refer to the Greek he would find that the verb was *calachrino*, equivalent to the Latin *judico*, to pass sentence against one. It showed that at that time there was no such thing among the Jews as private authority to punish adultery. What could be more shocking, what so irreconcilable with the existence of peace and good government than the doctrine that he who is grievously wronged is to take into his own hands the knife, and to execute summary judgment against the offender? Society could not exist with such a doctrine. If it were established here, in the capital of the Nation, the land would present one great scene of violence and confusion, because the principle would not be confined to the single crime of adultery, but would extend to all other wrongs for which the law did not give the offended party adequate reparation. He did not know that it was necessary for him to argue these instructions any further. In regard to the other instructions prepared by his colleague, he would not discuss the second, third and fourth, because they were copied from the instructions of his Honor in the case of Day. As to the fifth instruction, the proposition was: Although adultery did not offer a legal provocation or justification, yet, if the prisoner knew that the deceased had had adulterous intercourse with the prisoner's wife, and if the prisoner saw the signals and knew their meaning, the passion excited would make a legal provocation, reducing the grade of crime from murder to manslaughter. It merely asked his Honor to repeat in this case the old and well-settled law on that subject.

As to the propositions offered by the defense, they were, many of them, if not all, liable to the objection of being abstract propositions of law, and did not conform to the practice. The first proposition was liable to the objection that his Honor would have to confide to the jury the functions of the judge. The effect of laying down this proposition to the jury, without anything more, your Honor, who is placed there for the purpose of instructing us at the bar, and the jury, as to the law, and to whom the community look for a declaration of law, leaves it to the jury to find whether there is any proof of alleviation, excuse or justification arising out of the defense. Does the counsel mean to say in general terms, with regard to the feelings with which men are disposed to look at the fact of killing under these circumstances, that they may find something of alleviation, excuse or justification of the act? It is not as to the alleviation which might be drawn under other and different circumstances, therefore, that they find in the circumstances of the case made by the prosecution.

There is some alleviation, is it meant to say, if the jury find that the presumption of malice is rebutted? I presume not. Your Honor is to say to the jury what facts and circumstances it is competent for them if they believe them, to consider as an alleviation, excuse or justification in this case, for it must be alleviation, excuse or justification in the eye of the law. It must be what your Honor must de-

clare legal alleviation, excuse or justification; and it would be, I think, taking an extraordinary, not the usual course, to throw the whole case before the jury without giving instructions. What is meant by this equivocal language is that the jury are presumed to be acquainted with the law further than what other men know of it. Without the aid of your Honor it is not to be presumed what is the law which will amount or extend to alleviation, excuse or justification. I object to the first proposition on this ground. I will say nothing about the abstract proposition of law, but will add from the fact of killing, whenever the law presumes malice, it may be rebutted by certain facts and circumstances, or circumstances and facts of a certain sort, which the law regards as alleviation, excuse or justification.

As to the second proposition—namely, the existence of malice—it is not presumable in the case, if, on any rational theory consistent with all the evidence, the homicide was either justifiable, excusable, or an act of manslaughter. I must express my admiration at the singular adroitness with which it has been prepared. I think I see in this proposition an invitation to the jury to consider whether, on all they have heard of this case, the theory of my learned friend—although I don't mean to say it is his theory alone, but may be that of the gentlemen associated with him—whether the theory of the homicide was excusable under these circumstances, and whether it is a rational theory; and that if the jury think it is, then the existence of malice is not presumable. While I acknowledge, to the fullest extent, the right of the jury, I deny it is the province of this or any court to invite the jury, or to submit to the jury on the application of counsel, the question whether the law is to be thus or so. We had better—I say it with the most perfect respect—abolish the bench entirely if such practice is to prevail, and trust to the jury, without any interference of the Judge. I know of no authority or precedent, on the face of it by express terms, which induces a submission to the jury by the Court, as to what is the law of the case. They or your Honor are to determine whether there be a rational theory of justification in law, in any view of the evidence of this case. Your Honor is to tell them what is a justification in law, and it is for them to form their opinion.

As to the third point namely that if there be any rational hypothesis consistent with the conclusion that the homicide was justifiable or excusable, the defendant must be acquitted—this was substantially the same as the second, only that it was more boldly stated.

In the fourth proposition the defense undertake to save the prisoner from conviction for manslaughter, by saying that, if the jury believed that Mr. Sickles intended to kill Mr. Key, he cannot be convicted of manslaughter. He submitted, however, that it did not follow that, because Mr. Sickles intended to kill Mr. Key, he could not therefore, be convicted of manslaughter. He could suppose many cases where a party does intend to kill the assailant, and does kill him, and where the act falls short of murder, and is manslaughter.

The fifth proposition was, again asking your Honor voluntarily to

surrender into the hands of the jury the functions of the Judge—the whole investigation on the whole question of law and fact. If his Honor did that, society would be exposed to those doctrines that are inconsistent with the existence of civil society. The jury would be referred to their own conscience, without regard to law, and would be asked to say, whether that unhappy deceased did or did not deserve his fate; and if they thought he did deserve it, they would be asked to acquit the prisoner. He would not stop to argue the falsity of that proposition.

The sixth proposition was, that if Mr. Sickles killed Mr. Key while the latter was in criminal intercourse with the wife of the prisoner, Mr. Sickles cannot be convicted of either murder or manslaughter. That was again laying down the doctrine of divine right on the part of the injured husband to slay an adulterer.

The seventh point was, that if the jury found Mr. Sickles was laboring under the influence of a diseased mind, and was really unconscious that he was committing a crime, he is not in law guilty of murder. This proposition was in quotation marks, but he did not know where it was taken from. He did not suppose it was taken from his Honor's ruling.

*Mr. Brady.* It is Mr. Bradley's language in the Day case.

*Mr. Carlisle.* I am glad it is not the Judge's language.

*Mr. Brady.* His Honor adopted those instructions.

*Mr. Carlisle* could well imagine how his poetical friend on the other side, who seemed to have the great dramatist at his finger's end, could make an argument on those words, "diseased mind." He could transpose the words, and say with Macbeth, "Canst thou not minister to a mind diseased, pluck from the memory a rooted sorrow, raze out the written troubles of the brain?" etc. This doctrine would amount to making ungovernable passion an equivalent to insanity. Such a doctrine would render criminal law nugatory.

The eighth proposition was similar to the seventh. It is, that if the jury believe, from any predisposing cause, the prisoner's mind was impaired, and he became mentally incapable of governing himself, etc. Why, we know every man who is under the influence of uncontrollable passion and thirst for revenge is mentally incapable of governing himself. But who would argue that he was not accountable for acts done under that influence? If Mr. Sickles had adopted the theory of his friend, and been advised that it was no crime to kill Mr. Key under these circumstances, this proposition asked his Honor to say that then it was no crime, and that the jury must acquit him.

The ninth proposition again places it in the province of the jury to declare whether the prisoner had capacity of mind to decide upon the criminality of the particular act, the homicide, and if they think he had not, the jury must acquit him. There was a code which might hold that the deceased had forfeited his life to the prisoner. That was the duelling code. It was not the code of assassination, but of honor, where it is so arranged that the parties



shall be placed on terms of equality. With that code, however, they had nothing to do. It was unchristian, was denounced by law, and was fast fading from civilized society.

*Mr. Brady.* I have lately perused the history of duelling, and I will let you have it, if you choose.

*Mr. Carlisle.* No, sir. I have no desire to read it.

*Mr. Brady.* The adulterer has never been placed on the footing of an honorable man, but has been treated as a dishonorable man.

*Mr. Carlisle.* The tenth proposition, which is that the law does not require that the insanity which absolves from crime should exist for any definite period, but only at the moment when the act is committed. He did not believe in such a state of insanity. No theorist had ever laid it down, and the proposition was entitled to no favor from the Court.

The eleventh proposition was, that if the jury have any doubt as to the homicide, or the sanity of the prisoner, he should be acquitted. He argued that the presumption was to be in favor of sanity, not of insanity. The proposition here was, that the presumption should disappear, and that the prisoner should have the benefit of any doubt about sanity. Insanity was the most easily counterfeited matter, and if this doctrine were established all cases of homicide under passion could easily be brought within the defense of insanity. The defense of insanity was a specific defense, and must be proved affirmatively and beyond doubt. There was no reason why that defense should be placed on more favored grounds than any other defense. On the contrary, there was every reason why the defense of insanity should be proved beyond any reasonable doubt. The doctrine embraced in this proposition was a very dangerous doctrine. It had been laid down by all authorities, and decided by the twelve judges of England, in McNaughten's case, that the defense of insanity must be proven to the satisfaction of the jury.

#### MR. STANTON'S SPEECH.

*Mr. Stanton.* It becomes my duty to present some considerations in support of the points of law which have been submitted by the defense, and which points are in conformity with those which may be given to a jury. The event which has brought the jury and the prisoner at the bar into solemn relations, and made the court and counsel participators in this momentous trial, is the death of Mr. Key at the hand of Mr. Sickles on Sunday, the 27th of February. The occasion of this event was an adulterous intrigue between Mr. Key and the wife of Mr. Sickles. The law arising on the case must depend on the relations each held to the other at the time the

occurrence took place. Two theories had been presented—one by the prosecution, the other by the defense. Those theories, as in all such cases, are opposite; and it will be for the court by a comparison of those theories with the known principles of law to give to the jury the instruction.

The act of taking human life is designated in law by the general term of homicide, which may be either with malice of without malice. The act of Congress which governs in this district designates two grades of unlawful homicide—namely, murder and manslaughter. In some states the law designates other grades of unlawful homicide, but only two are designated by the act of Congress above referred to; but life may be taken under circumstances which the law will excuse or justify. This must depend on a variety of circumstances, neither foreseen nor enumerated, and must be judged by wise tribunals, and by maxims which form the common law of the land, and are essential to peace and security. They are illustrated by examples and cases, whence the reason of the law can be derived, and by these the true rule of judgment is ascertained.

There are two classes of cases in which a man may be exempted from judicial punishment for killing—namely, self-protection as a natural right and the defense of one's household from the thief or robber. There is a third class, arising from the social relation—the law holding family chastity and the sanctity of the marriage bed, the matron's honor and the virgin's purity to be more valuable and estimable in law than the property or life of any man. The present case belonged to that class. On it rests the foundation of the social system. As it involves the life of the prisoner, it cannot be too carefully considered. This principle has never come before a judicial tribunal in a form more impressive than now.

Here, in the capital of the nation, the social and political metropolis of thirty millions of people, a man of mature age, the head of a family, a member of the learned profession, a high officer of the government, intrusted with the administration of the law, and who for years at this bar has demanded

judgment of fine, imprisonment and death against other men for offenses against law, has himself been slain in open day in a public place, because he took advantage of the hospitality of a sojourner in this city. Received into his family, he debauched his house, violated the bed of his host, and dishonored his family. On this ground, alone, the deed of killing was committed.

The instructions presented by defendant bring to the view of the court two consistent lines of defense—one, that the act of the prisoner at the bar is justified by the law of the land, under the circumstances of its commission; the other, that, whether justified or not, it is free from legal responsibility by reason of the state of the prisoner's mind. When the crime was committed against him by the deceased, in both points of view, the relations which the deceased and the prisoner at the bar bore to each other at the moment of the fatal act are to be observed—one, as a husband outraged in his house, his family, and his marital rights; the other, an adulterer in *flagrante delicto*. While counsel for the prisoner insist that the act is justified by the law, the counsel for the prosecution assert that the act is destructive of the existence of society, and demand judgment of death against him as a fitting penalty.

The very existence of civil society depends not on human life, but on the family relations. "Who knows not," says John Milton, "that chastity and purity of living cannot be established or continued, except it be first established in private families, from whence the whole breed of men come forth?" "The family," says another distinguished moralist, "is the cradle of sensibility, where the first lessons are taught of that tenderness and humanity which cement mankind together; and were they extinguished, the whole fabric of society would be dissolved." In a general sense, the family may embrace various degrees of affinity, more or less near; but in a strictly legal sense it embraces the relations of husband and wife, parent and child, brother and sister. The first and most sacred tie, however, is the nuptial bond. "Eternal discord and violence," says a great moralist, "would

ensue if man's chief object of affection were secured to him by no legal tie." No man could enjoy any happiness or pursue any vocation if he could not enjoy his wife free from the assaults of the adulterer. The dignity and permanence of the marriage are destroyed by adultery. When the wife becomes the adulterer's prey, the family is destroyed, and all family relations are involved in the ruin of the wife. When a man accepts a woman's hand in wedlock, he receives it with a vow that she will love, honor, serve and obey him in sickness or in health, and will cleave only to him. This bond is sanctified by the law of God. "What God hath joined together let no man put asunder." By a marriage, the woman is sanctified to the husband, and this bond must be preserved for the evil as well as for the good. It is the blessing of the marital institution that it weans men from their sins and draws them to the performance of their duties. This seal of the nuptial vow is no idle ceremony. Thenceforth the law commands the adulterer to beware of disturbing their peace. It commands that no man shall look on woman to lust after her.

The penalty for disobedience to that injunction did not originate in human statutes; it was written in the heart of man in the Garden of Eden, where the first family was planted, and where the woman was made bone of man's bone, flesh of man's flesh. No wife yields herself to the adulterer's embrace till he has weaned her love from her husband; she revolts from her obedience and serves the husband no longer. When her body has been once surrendered to the adulterer, she longs for the death of her husband, whose life is often sacrificed by the cup of the poisoner or the dagger or pistol of the assassin.

The next great tie is that of parent and child. If in God's providence a man has not only watched over the cradle of his child, but over the grave of his offspring, and has witnessed earth committed to earth, ashes to ashes, and dust to dust, he knows that the love of a parent for his child is stronger than death. The bitter lamentation—"Would to God I had died

for thee"—has been wrung from many a parent's heart. But when the adulterer's shadow comes between the parent and child, it casts over both a gloom darker than the grave. What agony is equal to his who knows not whether the children gathered around his board are his own offspring or an adulterous brood, hatched in his bed. To the child it is still more disastrous. Nature designs that children shall have the care of both parents; the mother's care is the chief blessing to her child—a mother's honor its priceless inheritance. But when the adulterer enters a family, the child is deprived of the care of one parent, perhaps of both. When death, in God's providence, strikes a mother from the family, the deepest grief that preys upon a husband's heart is the loss of her nurture and example to his orphan child; and the sweetest conversation between parent and child is when they talk of the beloved mother who is gone. But how can a father name a lost mother to his child, and how can a daughter hear that mother's name without a blush? Death is merciful to the pitiless cruelty of him whose lust has stained the fair brow of innocent childhood by corrupting the heart of the mother, whose example must stain the daughter's life.

The pride and glory of the family is its band of brothers and sisters. Sprung from the same love, with the same blood coursing in their veins, their hearts are bound together by a cord which death cannot sever; for, wide asunder as may be the graves of a household, varied as may be their life here on earth, when life's rough ocean is passed, sooner or later they will rejoice on the heavenly coast—a family in heaven. But when the adulterer puts a young wife asunder from her husband, her child is cut off from all kindred fellowship. The companionship and protection of a brother of the same blood can never be hers. No sister of the same blood can ever share her sorrow or her joy. Alone, thenceforth, she must journey through life, bowed down with a mother's shame. Nor does the evil stop here. It reaches up to the aged and venerable parents of the wretched husband and of the ruined wife, and stretches around to the circle of relatives and friends that

cluster around every hearth. Such are the results of the adulterer's crime on the home—on the home, not as it is painted by the poet's fancy, but home as it is known and recognized by the law; as it exists in the household and as it belongs to the family of every man. They show that the adulterer is the foe of every social relation, the destroyer of every domestic affection, the fatal enemy of the family, and the desolator of the home. The crime belongs to the class known in law as *mala in se*—evil in itself—fraught with ruin to individuals and destruction to society.

Such being its nature, we can easily perceive why it is that in Holy Writ the crime of the adulterer is pronounced to be one which admits of no ransom and no recompense. We can perceive why it is that in every book of the Old and New Testament it is denounced; why it is that by every holy law-giver, prophet and saint, it is condemned. We can understand why it is that twice it is forbidden in the Ten Commandments, and why it is that Jehovah himself, from the tabernacle in the midst of the congregation, declared that "the man who committeth adultery with another man's wife, even he who committeth adultery with his neighbor's wife, shall surely be put to death." By God's own ordinance he was to be stoned to death, so that every family in Israel, every man, woman and child might have a hand in the punishment of the common enemy of the family. By the Levitical law, the adulteress was subject to the same punishment. But the Redeemer of mankind, when on earth, is supposed to have mitigated the punishment of the adulteress by requiring him who was without sin to cast at her the first stone. No such condition, however, was imposed in favor of the adulterer. There was no mitigation of his crime, and we know the Savior's judgment of the sin when he declared that "he who looketh at a woman to lust after her committeth adultery in his heart." From the silence of Scripture on the occasion recorded in the Gospel of John, it is to be inferred that, as the adulterer and adulteress had been taken in the act, the adulterer on that day in Jerusalem had been put to death by

the husband, as he might be by the Roman law, before the adulteress had been brought to the Savior's feet. This case has been cited here, as it often is in favor of the adulterer and against the husband. But the argument of Dr. Paley, alluded to by counsel on the other side, conclusively shows that that case cannot be cited in favor of the adulterer. On that day, in Jerusalem, the laws of Moses, as a civil and political institution, had passed away and the Roman law had taken its place.

Why was it that the men of Jerusalem brought not to the Savior the adulterer who had been taken at the same time, if they wanted to know the Savior's judgment of the sin of adultery. By the Roman law, while the adulterer suffered death, that punishment does not seem to have been inflicted on the adulteress. This woman, therefore, was brought to the Savior's feet to hear what would be his judgment. If he had undertaken to say that the laws of Moses ought not to prevail then, an accusation might be brought against him in the synagogue; and if, on the other hand, he had said that the laws of Moses should be enforced, then ready accusation would have leaped to their lips that he was usurping judicial functions, and he would have been brought before the judgment seat of the Roman authorities. As Dr. Paley observes, the case only serves to show that the Savior meant to rebuke those who tempted him, but that he never designed to shield the adulterer from the just doom of the law.

What, then, is the act of adultery? It cannot be limited to the meeting moment of sexual contact; that would be a mockery; for then the adulterer would ever escape. But law and reason mock not human nature with any such vain absurdity. The act of adultery, like the act of murder, is supposed to include every proximate act in furtherance of, and as a means to, the consummation of the wife's pollution. This is an established principle in American and English law, established from the time of Lord Stowell, as will be hereafter shown. If the adulterer be found in the hus-

band's bed, he is taken in the act, within the meaning of the law, as if he was found in the wife's arms. If he provide a place for the express purpose of committing adultery with another man's wife, and be found leading her, accompanying her, or following her to that place for that purpose, he is taken in the act. If he not only provides but habitually keeps such a place, and is accustomed by preconcerted signals to entice the wife from the husband's house, to besiege her in the streets, to accompany him to that vile den; and if, after giving such preconcerted signal, he be found watching her, spy-glass in hand, and lying in wait around a husband's house, that the wife may join him for that guilty purpose, he is taken in the act.

If a man hire a house, furnish it, provide a bed in it for such a purpose, and if he be accustomed, day by day, week by week, and month by month, to entice her from her husband's house, to tramp with her through the streets to that den of shame, it is an act of adultery, and is the most appalling one that is recorded in the annals of shame; if, moreover, he has grown so bold as to take the child of the injured husband, his little daughter, by the hand, to separate her from her mother, to take the child to the house of a mutual friend while he leads the mother to the guilty den, in order there to enjoy her, it presents a case surpassing all that has ever been written of cold, villainous, remorseless lust.

If this be not the culminating point of adulterous depravity, how much farther could it go? There is no one point beyond. The wretched mother, the ruined wife, has not yet plunged into the horrible filth of common prostitution, to which she is rapidly hurrying, and which is already yawning before her. Shall not that mother be saved from that, and how shall it be done? When a man has obtained such a power over another man's wife that he cannot only entice her from her husband's house, but separate her from her child for the purpose of guilt, it shows that by some means he has acquired such an unholy mastery over that



woman's body and soul that there is no chance of saving her while he lives, and the only hope of her salvation is that God's swift vengeance shall overtake him. The sacred glow of well-placed domestic affection, no man knows better than your Honor, grows brighter and brighter as years advance, and the faithful couple whose hands were joined in holy wedlock in the morning of youth find their hearts drawn closer to each other as they descend the hill of life to sleep together at its foot; but lawless love is short-lived as it is criminal, and the neighbor's wife so hotly pursued, by trampling down every human feeling and divine law, is speedily supplanted by the object of some fresher lust, and then the wretched victim is sure to be soon cast off into common prostitution, and swept through a miserable life and a horrible death to the gates of hell, unless a husband's arm shall save her.

Who, seeing this thing, would not exclaim to the unhappy husband: Hasten, hasten, hasten to save the mother of your child. Although she be lost as a wife, rescue her from the horrid adulterer; and may the Lord, who watches over the home and the family, guide the bullet and direct the stroke.<sup>1</sup> And when she is delivered, who would not reckon the salvation of that young mother cheaply purchased by the adulterer's blood? Aye, by the blood of a score of adulterers! The death of Key was a cheap sacrifice to save one mother from the horrible fate which, on that Sabbath day, hung over this prisoner's wife and the mother of his child.<sup>2</sup>

Under the laws of Maryland, as they descended to the District of Columbia, at the time of the session in 1801, it has never been adjudged by this or any other court, that the man who destroyed the violator of his family chastity was guilty of a crime.

<sup>1</sup> *Mr. Stanton* here reviewed the authorities, both English and American, bearing upon the question of adultery as a justification for homicide.

<sup>2</sup> Here the audience broke into an unrestrainable burst of applause, which the officers of the court vainly endeavored to check.

Manning was a married man who, entering his house one day, found his wife in the arms of a neighbor who was committing adultery with her. The husband snatched up a stool and struck a blow over the adulterer's head, and killed him on the spot; and for this was arraigned as a prisoner for murder. As an Englishman it was his birthright to have the act passed upon by a jury of his country, and his innocence or guilt determined by them in accordance with the common law. But this was in the dark days of judicial tyranny and corruption; the day when jurors were fined and sent to jail, as the authorities show, for refusing to find verdicts against their consciences, in accordance with the charge of the court; in a day when, from the King's Bench, from Westminster Hall, it was declared that the judge was intrusted with the liberties of the people, and that his saying was the law. That was the day when it was adjudged that the husband was a felon for killing a man caught in adultery with his wife. In Manning's case Judge Twisden directed a special verdict, and determined the degrees of guilt himself; and Manning was punished by being branded on the hand as a felon.

There were four epochs in which killing in such cases went unpunished: it was justified under the Jewish dispensation, by the laws of Solon, by those of the Roman empire, and by the Gothic institutions which have given shape to our own. By the mere force of frequent repetition in the books, of Manning's case, it has come to be believed that a man must stand by the bed of his wife and behold the adulterer polluting his bed, and not raise his hand against him. From the time of Edward II to King Charles—three hundred and sixty odd years—no word is to be found in the common law, no word imputing guilt to the slayer of the violator of the chastity of his wife. This right to kill was never denied till now. There is one fact I have never before seen related, except by Paley, that by the laws of the commonwealth, immediately preceding the time of Charles, adultery was punished by death.

*Mr. Carlisle.* Blackstone mentioned it. In 1650, at a period before the judgment in Manning's case, it was punishable by death.

*Mr. Stanton.* The age of Charles was an age of adultery and gross corruption; the palace was filled with harlots and thronged with adulterers and adulteresses; the judges were the panderers, partakers and protectors of the corruptions of the age, and the same court which adjudged the husband to be a felon for slaying the adulterer on his bed, fined and sent jurors to prison for refusing to find verdicts in accordance with its instructions. It was the same court which hunted Quakers, Catholics and Nonconformists to death; the same court which persecuted John Howe and Richard Baxter, and which sent to the pillory and prison John Bunyan for preaching the gospel to the poor.<sup>3</sup>

This was the state of the laws and social life at the time the principle was introduced into the common law of England, that to kill an adulterer in the act is a crime. And when society in this district is reduced to the same condition, and when the government offices are filled by open and avowed adulterers, when the professions of law and medicine shall be thronged with libertines, when the wife's purity and family chastity shall become a jest, then it will be time to introduce here a principle of common law never before heard from the judgment-seat; then it will be necessary for the court to extend the shield of law over its attorneys to save their lives from the hands of the husbands whose wives they have violated, whose homes they have destroyed, and whose families they have made desolate.

I claim, then, on this proposition, that the expression or rule of the common law in regard to the consent of the wife had its origin in a state of manners and of social life that do not exist in this country, and that that rule is not applicable here. It is founded on the principle that the wife's consent can qualify the degree of the adulterer's guilt, and determines the husband to be a criminal. In American so-

<sup>3</sup> For a history of those times, Mr. Stanton referred to Macaulay, Vol. I, p. 140.

ciety, there is a freedom from restraint and supervision that exists nowhere else, and this results from various causes: husbands, fathers and brothers devote a large share of time to the cares of life and to the duties of providing for the family, during which time the female portion of the family are left to themselves without protection. The frequent changes of habitation and the equality of our social condition lead to a frankness of intercourse which requires, for the sanctity of the home and the security of the marriage bed, a rigorous personal responsibility to the death. The peculiar conditions of society in this District are also to be noted before any principle like that of social law can be introduced.

Families come hither from all parts of the Union to remain for a shorter or a longer period of time. To enjoy any social life here, the intercourse must be frank, without suspicion. The time which, in long established communities, may enable individuals to choose and pick out those with whom they may associate, is not had here. Besides, it has been the custom here for officers of the government, and those in the public employment, to throw open their doors with a wide hospitality that exists nowhere else. This forms a peculiar feature and attraction in Washington society, and by the population that it attracts here and the stimulus thus given to business, the wealth and prosperity of the city and District are promoted. But if these social occasions are to be made the means of guilty assignations; if they are to become the means by which the adulterer pursues his lust, then the doors of families must be swiftly closed. No man would be willing to have his hospitality made the means of an assignation, or the social occasions, when he desires to give his friends and neighbors pleasure, converted into opportunities for corrupting the innocent wife of his friend.

I repeat, then, that the doctrine on which this prosecution rests, is founded on the Manning case, copied by Hale and Foster and Blackstone. But it is also to be observed

that, from the day in which Manning's case was decided to the present hour, it has not been followed by the conviction of a husband in England. No husband since then has been punished as a felon for taking the life of an adulterer. In three cases the doctrine of that case has been declared from the bench, but only by two judges: the case of the Queen against Fischer, the case of the Queen against Kelly, and another case. Two of these were tried by Justice Parke, and the other by Baron Rolfe. In the one, there was no adultery of the wife; in the other, no marriage, and in the third, the crime was of a totally different nature.

As, from the time of Alfred to the time of Charles the Second, there is no evidence that a husband was regarded as a felon in common law for slaying an adulterer, so from the time of Charles the Second to the present hour that principle has never been enforced by the punishment of any man in England.<sup>4</sup>

There is another case cited in Jones—the case of a white man; but there was sufficient evidence to show that the killing proceeded from preceding malice. The case, however, which was cited from Hill's Reports, has some analogy to this case. There the adulterer slew a husband who was endeavoring to rescue his wife, and it was held that the murderer could not set up the plea of self-defense. The American common law on this subject is shown in the cases of Singleton Mercer, of Myers, of Jacob Green, the case of John Stump, and the case of Jarboe, where, in each instance, the slayer of the seducer was acquitted. I also refer your Honor to Smith's case and Sherman's case in Philadelphia, Boyer's case in Virginia, and Ryan's case reported in Vol. 2 Wheeler's Criminal Cases, p. 47. Where, then, I ask,

<sup>4</sup> *Mr. Stanton* then proceeded to argue that in three cases cited by the prosecution from the North Carolina and South Carolina reports, there were entirely distinct questions at issue; that, so far as the marital relations of slaves were concerned, they were not recognized by the laws of those States, and that, therefore, the adjudications or rulings in the case of slaves did not govern or apply to this case.

does the adulterous doctrine of Charles the Second prevail in America? Not where the stars and stripes wave; not even where the royal banner of England floats; for it was not long since, in Canada, a husband had followed his wife's seducer from city to city till he found and slew him; and there the doctrine of Charles the Second was repelled and the man instantly acquitted.

By the American law the husband is always present by his wife; his arm is always by her side; his wing is ever over her. The consent of the wife cannot in any degree affect the question of the adulterer's guilt; and if he be slain in the act by the husband, then it is justifiable homicide. I will pass, then, to the question of what constitutes the act. I understood one of the learned counsel for the prosecution to claim, in accordance with the very loose language of Baron Parke, that it is necessary for the husband to have ocular demonstration.

*Mr. Carlisle.* "Finding" is the word.

*Mr. Stanton.* It does credit to the frankness as well as to the good sense of the counsel not to claim that doctrine, but that is the doctrine of Manning's case. The wife could not only consent to the act, but the husband, if he came in in the dark, could not lay his hand on the adulterer until he lit the candle and saw his shame; and then if he slew the adulterer he must have the felon's branding on his hand. The object was to erect before the husband the gallows and branding iron, so that the courtiers and corrupt men of that age might pursue with impunity the wives and daughters of the people; hence they demanded not only that the wives should give consent, but that the husband should see his shame. As late as within the last few years, Baron Parke, sitting in the judgment-seat of England, said that the husband must have ocular inspection of the act. What is the act, and what is necessary? It is the fact of adultery that constitutes the guilt of the individual and the justification of the husband. The fact is to be mani-

fested according to the rules of evidence that apply in regard to other facts. It is claimed by the defense that the evidence was brought directly to the visual senses of the prisoner at the bar; but whether it was so or not, the fact is only to be determined by the ordinary rules of evidence.\*

My last proposition is, that the wife's consent cannot shield the adulterer, she being incapable by law of consenting to any infraction of her husband's marital rights, and that, in the absence of consent and connivance on his part, every violation of the wife's chastity is, in the contemplation of law, forcible and against his will, and may be treated by him as an act of violence and force on his wife's person. It follows, as a logical consequence, from the relation of husband and wife, as stated in the first proposition, because her very being and existence is suspended, that is to say, "incorporated and consolidated," says Blackstone, into that of the husband during marriage, that any invasion of the husband's right or chastity of the wife is a forcible act.

The law does not look to the degree of force; it looks to the forcible movement; and being an act of force, it follows that the right of the husband to resist that force is clear and undoubted on the highest principles of law. My friend here says he condemns the adulterer as much as any one, but that he abhors lawless violence. So do I; but the question is here whether the violence be lawless? In undertaking to designate the act of the prisoner here as an act of violence, as an act of personal justice, he assumes the very question that is involved, because on no theory of law, on no system of jurisprudence recognized among men, has the defense of a right, the maintenance of possession in a right, the protection of a right, been recognized either as a revengeful act or an act of lawless violence. By the contemplation of law, the wife is always in the husband's pres-

\* He here referred to the rules of evidence in regard to adultery, as laid down in *Poynter on Marriages*, 187; *Collins v. State*, 14; *Ala. R.*, 608; *State v. Jolly*, 3; *Dev. & B. (N. C.)* 110.

ence, always under his wing; and any movement against her person is a movement against his right, and may be resisted as such.

We place the ground of defense here on the same ground and limited by the same means as the right of personal defense. If a man be assailed, his power to slay the assailant is not limited to the moment when the mortal blow is about to be given; he is not bound to wait till his life is on the very point of being taken; but any movement towards the foul purpose plainly indicated justifies him in the right of self defense, and in slaying the assailant on the spot. The theory of our case is, that there was a man living in a constant state of adultery with the prisoner's wife, a man who was daily, by a moral—no, by an immoral power—enormous, monstrous, and altogether unparalleled in the history of American society, or in the history of the family of man, a power over the being of this woman—calling her from her husband's house, drawing her from the side of her child, and dragging her, day by day, through the streets in order that he might gratify his lust. The husband beholds him in the very act of withdrawing his wife from his roof, from his presence, from his arm, from his wing, from his nest; meets him in that act and slays him, and we say that the right to slay him stands on the firmest principles of self defense.

I have endeavored, as briefly as I could, to explain the principles of social law and jurisprudence on which the defense is planted, and I trust that, on examination, it will not be found to be any visionary ground of defense, or any such mere theory as was apprehended by my learned friend who opened the argument. He says that society could not exist on such principles, because this was the exercise of the right of private judgment; and if it was to be established as a principle, the land would be a scene of blood, as the punishment of adultery would be followed by the punishment of other crimes. Now, if it were so, if this land were to be a scene of blood, and if it were necessary



to make it so, I ask whether blood had not better run in torrents through our streets than that the homes of men should be destroyed by the adulterer at will? But it is not so. Neither your Honor nor I will be frightened by any such appalling picture. Thank God, adultery is a crime that is usually a stranger to American society. It is but rarely in our history that some great event like this occurs to startle society and lead it to the examination of the principles on which it is founded. That has been the case, and should it lead to the examination of the principles of law on which home and family rest, should it result in planting around that home and family the safeguards of the law, in breaking through the bonds by which the adulterous court of Charles the Second undertook to bind the arm of the husband, then some good will grow out of that great evil that has been produced by this event.

It is not my purpose to pursue this discussion in reference to the other points. I shall leave them to my colleague. I thank your Honor for the patience with which you have heard me in the discussion of this question. I have endeavored to discuss it on principles which I believe, as a man, as a father, and as a husband, to be essential to the peace and security of your home and mine. I have endeavored to discuss it on principles which are essential to the peace and prosperity of the society in which my home is planted as well as yours; and I hope that by the blessing of God, as it has been your Honor's good fortune to lay down the law which secures the family, in one aspect, from the seducer of the sister, you may also plant on the best and surest foundation the principles of law which secure the peace of the home, the security of the family, and the relations of husband and wife, which have been in the most horrid manner violated in this case.

## MR. BRADY'S SPEECH.

*April 25.*

*Mr. Brady* was quite sure his Honor would extend to him during the argument he was about to make, the same polite attention which he had hitherto received, and which he was delighted to

acknowledge. He should endeavor to confine himself cautiously to the proper discharge of the particular duty devolved upon him. He felt and his client felt the great importance of endeavoring to convince your Honor's judgment of the propriety of the prayers which they asked your Honor to instruct the jury. He would not go over the same ground as his learned associate (Stanton), had gone over, but would confine himself to those matters which his associate had slightly passed over.

There was a great difference of opinion between the counsel for the defense and the counsel for the prosecution, as to the principles on which this case rested, and the counsel for the prosecution (Carlisle), was in error in saying that the instructions asked for by the defense were purely of an abstract character. The prosecution had commenced by showing a case which might be termed assassination, and which showed, in none of its aspects, mitigation or alleviation.

The District Attorney had represented the prisoner as a walking magazine, an animated battery going out from his house on the morning of the homicide determined to turn all his engines of destruction against Mr. Key. He is represented as knowing Mr. Key to be unarmed, and as having given the deceased no opportunity of defending himself, but in a cowardly manner shot him down. That statement, however, was utterly unsustained by the evidence adduced for the prosecution. Every man would have been surprised if the evidence had been allowed to stop there, showing only the mortal meeting of these two men, who had been hitherto fast friends. If the case had stopped there, would not the whole world say, that in such a case there must have been either insanity or justification.

While the prosecution thus presented the case in the opening the counsel for the defense had suggested that their defense rested on two grounds. He had seen in the newspapers criticisms of the defense, that the two theories were inconsistent, that if the act were justifiable the defense of insanity should not have been set up. The defense, however, held that if the act was not held in law to be justifiable, they should have the benefit of the defense of insanity.

These views had elicited the defenses of justification of homicide in consequence of provocation, and of insanity, and it was in reference to these two defenses that the requests had been prepared. He must here take issue with the prosecution in reference to what the jury were to do. He had put an inquiry on that point to the District Attorney some days ago, but he had not heard a satisfactory answer since. That which he esteemed to be the ablest ruling on that point was to be found in *State v. Croteau*, v. 23, Vt. 14, where this rule is laid down.

This power of a jury is doubtless liable to abuse, and so is the power conferred on a Court, or any other human tribunal. But while a jury or court keep within their proper sphere of jurisdiction, they are in the exercise of the powers conferred on them, and

are in the performance of a legal right, and this, though they may, by the abuse of the power, be guilty of moral wrong.

The extent of a court or jury is measured by what they may or may not decide with legal effect, and not by the correctness or error of their decision. Thus, the butcher, Jeffreys, by virtue of his office as Judge, had the political power, and consequently the legal right to conduct the trial of Algernon Sidney, and to give his opinion upon the law of the case in his charge to the jury, though for his shameful abuse of the right he may have incurred the deepest moral right, so the jury, in a criminal trial have the legal right to decide the law as well as the facts involved in the issue; but this does not give them a right, by a wanton disregard of law, to decide arbitrarily.

If he could believe that the view of the counsel for the prosecution were correct, proud as he was of having been born in this land, proud as he felt in her great destinies, he would rather live under the worst despotism on the face of the earth.

I verily believe that next to the integrity of the Judiciary, which I hope will always continue as it has done in the past, to adorn our national character, next to that is the importance of preserving the trial by jury, especially in criminal cases, intact. I do not recognize in the Declaration of Independence, in the statement of all the abuses that led to the revolt of the American Colonies, anything set up as the occasion for the war of the Revolution that compares in importance with the right of trial by jury as it now exists in this land, and much as I abhor the shedding of blood and cowardly as I might be found when the moment of danger approached, I would be willing to lay down my life, and wade to any extent in the blood of the foe to prevent that palladium of liberty from being invaded for one moment.

Turning our attention now to that Sunday morning, and to that point of contact, let us see who the parties to it were. Each was in the rank of gentlemen, each a lawyer, each a man in public office. Looking at the relations that had existed between them as perfectly established in this case, we find that they had been close personal friends; we find that Mr. Sickles had, to the best of his capacity, urged the appointment or retaining in office of Mr. Key; that Mr. Sickles was desirous he should continue to discharge the duties of District Attorney; we find that Mr. Sickles had recommended clients to him; had employed him as his own counsel, and had given him free access to his house in the exercise of that hospitality prevailing in this District, to which my associate (Mr. Stanton) has so ably referred, and to which, before I go away—perhaps never to return—I, as a stranger, want to bear cheerful and heartfelt testimony.

In view of all these facts, there is no man in the District, possessed of any intellect, who, knowing anything of the antecedents of Mr. Key and Mr. Sickles, could have supposed that Mr. Sickles walked out of his house that Sabbath morning, left his home and his

wife, and that darling blossom of his heart—that child who has been polluted by the touch of the adulterer—could have walked out of his house in the light of day, under the blessed sunlight, and in the face of Heaven, and committed an assassination on the person of his friend. Therefore your Honor asks, the jury asks, and the whole world asks, how this thing was? The whole world, your Honor, has its eye on this case, and although there may seem to be egotism involved in the remark which I make, I cannot help saying, because I am here in the discharge of my duty, that, when all of us shall have passed away, and when each shall have taken his chamber in the silent halls of death, and while some of us would have been totally forgotten but for this unfortunate incident, the name of every one associated with this trial, from your Honor who presides in the first position of dignity, to the humblest witness that was called on the stand, will endure so long as the earth shall exist.

The whole world, I say, is watching the course of these proceedings, and the nature of the judgment; and I believe I know what kind of a pulsation stirs the heart of the world. I think I know, if the earth could be resolved into an animate creature, could have a heart, and a soul, and a tongue, how it would rise up in the infinity of space and pronounce its judgment on the features of this transaction. Now, with these two gentlemen thus coming together, with the fact before us that the District Attorney (Mr. Key) had been consulted as counsel for Mr. Sickles in relation to the very house which Mr. Sickles occupied at the time when Mr. Key was one of his most cherished guests, I will be permitted, in favor of the instructions, to which I will presently refer, to put before your Honor a very brief outline as to the undisputed facts in regard to the meeting of Mr. Sickles and Mr. Key. I will by sufficient testimony endeavor to daguerreotype the event precisely as it occurred. These gentlemen are brought into contact; a loud conversation occurs which no witness undertakes to give; after a loud conversation there is heard a scuffle between the parties, so that to Mr. McCormick's eyes it was a street fight, and he could imagine it to be nothing else; in the course of the encounter Mr. Sickles drew a pistol and fired a certain number of shots which took effect; at what time this occurred, in what position Mr. Key was left, is a matter of dissension and doubt. The testimony of the prosecution is conflicting. The result was that Mr. Key received his death-wound, and was taken to the Club House, and, shortly after, there were found near the spot, an opera glass, which belonged to him, and a Derringer pistol.

To whom did this pistol belong, and who used it in this encounter? No witness pretends that it was in the possession of Mr. Sickles; he had nothing but a revolving pistol. There is no statement, hint or insinuation from any witness that he had any other weapon. The conclusion that he had is entirely excluded by the proof. I ask who owned the Derringer pistol? You remember

what proofs we proposed to give about Key's being prepared for any emergency. In view of the facts of that collision, that pistol belonged to Key, and was used by him in that encounter; this is made conclusive although the personal friends of Key have been around this table watching the result of this trial, including Mr. Jones, with steadfast and searching interest, not one has asked whether this Derringer pistol was in Key's possession; no witness was brought here to say Key had such a pistol; not one, who attended to his domestic affairs, who brushed his clothes, was asked by his friends or associates, or permitted to state, whether this pistol belonged to Key?

*Mr. Brady* then read the first, second and third instructions heretofore presented by the defense:

First—There is no presumption of malice in this case, if any proof of "alleviation, excuse or justification" arise out of the evidence for the prosecution. (*State v. John*, vol. 3 *Jones*, p. 366; *McDaniel v. State*, vol. 8 *Smead's and Marshall's*, p. 401; *Day's case*, 17 of pamphlet.)

Second—The existence of malice is not presumable in this case, if on any rational theory, consistent with all the evidence the homicide was either justifiable or excusable, or an act of manslaughter. (Same cases as above cited; *United States v. Mingo*, vol. 2, *Curtis' C. C. R.*, 1; *Commonwealth v. York*, vol. 2 *Bennett & Heard, Leading Criminal Cas.*, p. 505.)

Third—If, on the whole evidence presented by the prosecution, there is any rational hypothesis consistent with the conclusion that the homicide was justifiable or excusable, the defendant cannot be convicted.

In *United States v. Mingo*, 2 *Curtis*, *Mingo and Johnson*, the deceased, had served on board the same ship, on its way from *Apalachicola* to *Boston*; the defendant was a *Haytien* negro, and the deceased a colored man from *Baltimore*; *Johnson* was armed with a hatchet, and *Mingo* with a knife; *Johnson* received three stabs; expressions of anger and ill-feeling before the murder were heard, but as to which party made the attack, at what time of the affray either armed himself, and what were the words used, the testimony of nine witnesses who saw the affray was contradictory. In this case a revolver as in the hands of *Mr. Sickles*, and a *Derringer* in those of *Mr. Key*, and there was no mortal to gainsay it.

A number of witnesses have been examined for the prosecution here, there no one gave the origin of the transaction. *Mingo* gave *Johnson* three stabs. *Mr. Sickles* fired three shots, although but one was mortal. Am I not right in saying no mortal, in view of the *Derringer* pistol, knows what were the words or the provocation at the moment of collision, and what was really the position of the parties. Did not *Mr. Sickles* accuse him of having dishonored his house, and may not *Mr. Key* have replied, "I have, and you can make the best of it," and this reply may have been accompanied by profanity—he drawing the opera-glass for one purpose

and the Derringer for another. Who can say anything I have stated is inconsistent with the testimony adduced? I only ask that you rest the case on the ground it was placed by Mr. Stanton, who has so adorned it by his eloquent powers.

We stand on the law of God, on the law of man, on justice, irrespective of the question of insanity. Before entering more particularly into this justification, let me say that my learned friends produced the bullet found in the person of Mr. Key, and which produced the mortal wound. When the bullet was produced I supposed it would fit the Derringer pistol, and therefore, an effort was made to connect Mr. Sickles with that—but unfortunately the bullet would not fit the Derringer pistol. The bullet which killed Mr. Key came out of the revolver. What then became of the bullet from the Derringer, which was found to be exploded.

In the case recited against Mingo, the Court held it was incumbent on the Government to prove felonious killing, and if on the whole evidence the Government failed to satisfy the jury that the act was felonious beyond a reasonable doubt, there must be a verdict of not guilty. But I do not think that the Government has proved, as required, a "case of murder beyond all reasonable doubt." If that case was more confused than this, I am not able to perceive it. I never saw Mr. Key but once, and did not see his face then, but whatever else might be said about him, none of his friends, or anybody who knew him, would say that he would not in a proper case, under rightful provocation, fight, and I suppose he would stand in the same category as described in the case I have just read, which says: "Both being on the deck, angry words passed between them; both being excited and ready for a fight, armed themselves simultaneously; both fought, and Johnson was killed"; the jury, in view of all the facts acquitted Mingo.

The prayer of the defense was not an abstract proposition; not an hypothesis of which there is no proof to warrant. If so, your Honor could not listen to it a moment. It is the fact that four shots were fired in this case, and, from the evidence as it stands, only three were fired from the pistol of Mr. Sickles. As to the fourth shot I am not called on to say or know who fired it; but I am permitted to say that that Derringer pistol belonged to Mr. Key, and the evidence shows that it was used in this encounter. There is one circumstance the most conclusive in the world. The gentlemen who came from the Club House understood this thing as I do, that there was no reason for making against Mr. Sickles any accusation. The Club House was the resort of Mr. Key. His friends were there in numbers, at the time in question. When it was ascertained that Mr. Key was lying near the door in a dying condition, these personal friends, gentlemen of character, no doubt, of courage and feeling alive to the importance of maintaining the law, having a just abhorrence of blood, and looking on assassination with disgust—coming to the scene, did not interfere to prevent Mr. Sickles from firing.

They heard from Mr. Sickles the remark, "He has defiled my bed," or "dishonored my house," and allowed him to pass away entirely unmolested; no one crying "shame," or "murder;" no one calling an officer, or attempting to arrest him. A jury, made up of Mr. Key's friends, might say he might walk free as any citizen; no one to stay his steps. The fifth prayer as presented by the defense is, it is for the jury to determine, under all the circumstances of the case, whether the act charged upon Mr. Sickles is murder, or justifiable homicide. When we prepared the instructions, we supposed we had conformed to your Honor's ruling in previous cases. In this connection I remark, in passing, that the case of Ryan is an authority directly in point, that it is for the jury, on all the evidence as to the husband slaying an alleged adulterer with his wife, to say whether it is murder or manslaughter. We drew these instructions on that. When Mr. Carlisle said the instructions were drawn adroitly, he gave us credit for what rests in himself. I think in shrewdness and sagacity he has no superior. We have done just what is right on this particular point.

The provocation, as we claim, was on the instant before Mr. Sickles went out, and if it had existed before that it would not detract from the influence of the last provocation, but make it the stronger and more controlling. The waving of the handkerchief was admitted—white handkerchief. Mr. Key was unfortunate in its selection. A handkerchief of that color, even among the most savage nations of the earth, is regarded as emblematical of purity, peace, good faith; of regard for hospitality and protection against treachery. The color of the flag of truce is that which was selected in this case. I hope I may be pardoned by my learned brethren for this remark, in passing, made not in anger, but sorrow, with all the feelings which belong to me. It would have been well if Mr. Key had attached as much importance to the dignity of a banner as did his distinguished sire, and had always within him a fresh recollection of those lines which identified him with the flag of our country wherever seen on earth. If he had remembered that the star-spangled banner has been raised everywhere, in the wilds of Africa, and on the mountain height, by the adventurous traveler, he would never have chosen that foul substitute for its beautiful folds. He would never have forgotten these two lines:

"And thus be it ever when freemen shall stand  
Between their loved homes and the war's desolation!"

If his noble father inculcated in lines imperishable the duty of the American people to protect their homes against the invasion of a foe, how does it become less a solemn duty of the American citizen to protect his home against the invasion of the traitor, who, stealing into his embraces under the pretext of friendship, inflicts a deadly wound on his happiness, and aims also a blow at his honor? Now this raises up at once before us the question of adul-

tery and its consequences, to which my learned associate so well referred—it brings to us, with regard to the use of that handkerchief, of that foul banner which polluted the atmosphere of Washington, the suggestion of our brother Stanton, that the common law to be enforced in this District was the common law that should be found to consist with our habits, customs, social condition and institutions. It recalls to our mind what he said as to adultery being a crime generally recognized on the whole face of the earth, and punished by all nations as a crime. It has never ceased to be a crime in the estimation of the jurists in England. I am furnished by a gentleman of great ability and distinction, of profound erudition, who has cast his lot among the people of this District, my friend, Prof. Dimitry, whose name I am happy to mention with honor, with this very brief abstract of the law of humanity, with respect to this offense of adultery:

First—Among the Jews, by the law of God, the adulterer and the adulteress were both stoned to death.

Second—In Greece, Lycurgus decreed that adultery should be punished the same as murder.

Third—The Saxons, by their law, burned the adulteress to death, and over her ashes reared a gibbet on which the adulterer, her accomplice, was hanged.

Fourth—Some of the northern nations of Europe suspend the adulterer to a hook—*istis quibus pecasset partibus*—and left him a sharp knife, with which he was compelled to inflict self-punishment, or expend his guilty life in protracted torture.

Fifth—In England, in the reign of Alfred, the woman was shorn and stripped to the waist, driven away from her husband's house, and, in the presence of all her relations, was scourged from tything and tything until death ensued; while the adulterer was strung up to the next tree.

Sixth—In France, under the laws of Louis the Debonair, both parties suffered capital punishment.

Seventh—Constantine inflicted capital punishment against adulterers of both sexes, and Justinian, in his reformation of the codes, left the same penalty menacing male adulterers.

Eighth—In the vicissitudes of time, adulterers were condemned to be scourged and banished, or scourged and doomed to row for life in the galleys of France.

Ninth—The Spanish laws deprived the adulterer of that through which he had violated the laws of society and the sanctity of the marriage bed.

Tenth—In Portugal, the adulterer was burned to death with the adulteress; but if the husband chose to save his guilty wife from this fearful chastisement, she was set free with a fine. I feel that I am warranted, in this connection, in saying, when compelled to speak of the sin of Mrs. Sickles because it is a necessary part of this transaction, that, in consideration of her extreme youth, and of the moral power which a man like Mr. Key might exercise



over her, or some worse power, under the circumstances to which I will not refer—it is not wrong that, in our own hearts, and perhaps not wrong that down deep in the heart of my friend who is at this bar, today, there should be some lingering remnant of hope that she had not entirely sinned and entirely destroyed herself. It was a gratifying circumstance to me to know—and I am sure none of us were otherwise than pleased with that little incident of the trial—that when in his agony the officer noticed his intention to ascend the stairs, he stationed himself at the foot because he feared in the then condition of Mr. Sickles that he might injure her who had been the partner of his life, whose head had been laid on his bosom, he, with a manliness that I know belongs to Daniel E. Sickles, gave him to understand that whatever was the condition of his mind, her person was safe from his touch.

Eleven—In Poland the adulterer was taken to the nearest bridge leading to the market town, in or near which he resided, and was there nailed or hooked to the main bridge post, a knife being at the same moment put into his hand to enable him to free himself by the mutilation of these parts. *Quibus presumisset peccare.*

Twelve—In the Kingdom of Bohemia, the penalty of the adulterer was decapitation, and that of the adulteress was perpetual seclusion, spent in menial drudgeries, and in penance on bread and water.

Thirteenth—In Roman history, instances frequently occur of adulterers being put to death; and until the enactment of the *lex julian*, the husband had the right of summoning all the relations of the adulterous wife, and trying her on the *hemicycleum*, the hearthstone of the household, and there and then adjudging her to death.

Memorandum—Our penal legislation on this subject is worse than useless; it is scandalous, for its very provisions are contrived to pour ridicule and ribaldry on the head of the husband, or on that of the wife, as the case may be.

Our legislation was worse than useless. By the laws of Maryland the punishment was a fine of three pounds in money, or a certain quantity of tobacco. He was happy that his learned friend the District Attorney, in revising the criminal code of this district, had testified his abhorrence of the crime by introducing a provision visiting adultery with far more terrible consequences than any ever fixed under any law known in this district. They were told that the English judges had said that they took no cognizance of adultery as a criminal offense. His associate (Mr. Stanton) had shown the Court that there never had been a conviction in England or in this country, of any husband who killed an adulterer, under what circumstances soever the homicide was committed—not one; but, on the other hand, there were adjudications showing that, in the contemplation of our people, on their views of the morality of the marital relations, of social duties, and of domestic life, there was such a common law as was contended for by his learned

brother Stanton. The suggestion that the party injured must be left to an action for damages is one that has frequently excited the disfavor, and I may add, the disgust of the most brilliant minds of the legal profession in England.

In order to show how far their judgment may assist us in seeing what would be the public sentiment, even in England, in cases like this, in opposition to the argument that is always made use of by the conservative lawyer of England, that when a husband has had the visitation of an adulterer's polluting presence in his house he must go to a lawyer, as he would with a promissory note, and have an action brought for damages;

I wish to read to the Court a few observations, from an eminent man with whose name all of us are familiar, who was once Sergeant Talfourd, and who died on the bench of England, in discharge of his official duty:

"Pathos much oftener than imagination falls within the province of the advocate, as employed at the bar in actions for adultery, seduction and breach of promise of marriage, ostensibly as a means of effecting a transfer of money from the purse of the culprit to that of the sufferer, it sinks yet lower than its natural place, and robs the sorrows on which it expatiates of all their dignity. The first of these actions is a disgrace to the English character, for the plaintiff who asks for money, has sustained no pecuniary loss, and what money does he deserve who seeks it as a compensation for domestic comfort, at the price of exposing to the greedy public all the shameful particulars of his wife's crime and of his own disgrace.

"He speaks of modesty destroyed, of love turned to bitterness, of youth blasted in its prime, and of age brought down by sorrow to the grave, and he asks for money. He hawks the wrongs of the inmost spirit, 'as beggars do their sores,' and unveils the sacred agonies of the heart, that the jury may estimate the value of their palpitations. Money will not compensate, not because it is insufficient in degree, but in kind, and, therefore, the consequence is, not that great damages should be given, but that none should be claimed. When once money is connected with the idea of mental grief, by the advocate who represents the sufferer, all respect for both is gone."

To show the precedent in American cases, I refer to the case of Bowyer, who having learned that his daughter had been seduced by McDowell, President of the Bank of Fincastle, in August, 1858, made a journey to Baltimore from Fincastle, about four hundred miles, and having there learned further particulars from her confession, came back and shot and killed McDowell, and yet Bowyer was acquitted and discharged by the called Court without the case ever being sent to the jury. I also refer to the case of Isaac C. Sherlock, and to the Canada case, where a husband followed his wife's seducer from city to city, deliberately shot and killed him as he was drinking at a bar, and was acquitted by the jury, and to

a remarkable case tried in Toulouse, France, at the Assizes of the Department of Upper Garonne, on the 23d of June, 1857, and reported in *The Gazette des Tribunaux*. It was the case of Abdon Souffare, who shot the seducer of his wife, Charles Broustel. In that case, the counsel for the accused maintained that there was, and that there could be no premeditation in the case, and summed up in these words, which are applicable to this case:

"Gentlemen of the jury: There are two great principles which you are to weigh in the forum of your conscience—one is the principle of the inviolability of human life. I proclaim it to you, gentlemen, like the church, *a sanguine humano abhorreo*. I have a horror of shedding human blood and of all the imageries of childhood that which has impressed me most deeply, is the far-off image of Abel slain by Cain. But next, and immediately next, to that principle is another—equally sacred one—the inviolability of conjugal society; the respect which it secures to woman as a wife or a daughter; the respect due to Souffare and his wife where they had hoarded theirs.

"You will not say, gentlemen, that a libertine, because he knows that a husband is for a number of hours chained down to the performance of a public duty, by which he gives support to his wife and children, shall be allowed with impunity to desecrate a man's bed and poison his whole existence. You will, then, gentlemen of the jury, stand in the midst of Souffare's broken up family, you will listen to those terrible revelations."

Jealousy is the rage of man. Thus speaks the Great God of the Universe to us. It is peculiarly the rage of a man, and in the wisdom of the inspired record, no estimate was ever formed of human nature more accurate as it now exists. I venture to say that if Mr. Key had possessed a wanton mistress, and that any man ventured within the house he had hired, to infringe upon his rights there, he would have been false to the instincts of humanity if that rage of jealousy had not taken possession of him. If I could have the grave opened, if I could have summoned here a witness who has not been called, if I could put Philip Barton Key on the stand in this court, in which he once officiated as a prosecuting officer, if I could ask him in virtue of his birth, his education, of whatever manly characteristics belonged to him, and whatever opinions he may have derived from his association with gentlemen what he would have done if any scoundrel had invaded his house, polluted and wronged his wife, and brought shame and reproach upon him, if I could have asked him what he would have done under such circumstances, I leave your Honor, I leave the learned prosecutor, I leave his surviving friends to say what would have been his answer.

"Jealousy is the rage of a man;" it takes possession of his whole nature; no occupation or pursuit in life, no literary culture or enjoyment, no sweet society of friends in the brilliancy of sunlight, no whispers of hope or promise of the future, can for one moment

keep out of his mind, his heart or his soul, the deep, ineffaceable consuming fire of jealousy. When once it has entered within his breast, he has yielded to an instinct which the Almighty has implanted in every animal or creature that crawls the earth. I cannot speak of the amours or jealousies of the worm; but when I enter the higher walk of nature, when I examine the characteristics of the birds that move about in the air, I find the jealousy of the bird incites him to inflict death upon the stranger that invades his nest, and seeks to take from him the love which the Creator has implanted in him, and formed him to enjoy.

I read in the records of travelers who have penetrated the wilds of Africa, that the most deadly engagement than can occur, an engagement which never permits both to pass away with that life, occurs between two lions when the lioness has proved wanton, or seduction has been applied to her. Yet man in his animal instincts is no more capable of controlling within him the laws which the Almighty has planted there than the inferior animals to which I have referred.

"Jealousy is the rage of a man," and although all the arguments that my learned opponents can bring, or that can be suggested, that a man must be cool and collected when he finds before him in full view, the adulterer of his wife, to the contrary notwithstanding, yet jealousy will be the rage of that man, and he will not spare in the day of vengeance.

The Court will remember the memorable language of John Philpot Curran, in a civil action for damages, when crim. con. was the controversy, in answer to the allegation that his client behaved otherwise than patiently and decently as became a gentleman, when he heard that his wife was false: "Gentlemen of the jury," said he, "it seems that when the fiends of hell were let loose upon the heart of my client, he should have placed himself before a mirror and taught the streams of his agony to flow decorously down his brow; he should have tuned his features to harmony, writhed with grace and moaned in melody." "Jealousy is the rage of a man!" It converts him into a frenzy in which he is wholly irresponsible for what he may do. I meet my learned friends distinctly upon the subject of insanity, relying upon the proposition which I have presented, drawn in strict conformity with the decisions already made by this court in other cases.

The counsel on the other side (Mr. Carlisle) had remarked that he considered such a thing as instantaneous insanity almost impossible. Such a doctrine could be drawn from the rulings of the court. It was impossible for any human being to perceive the exact point when he passed from a state of wakefulness to a state of sleep, and it was just as impossible to fix the exact moment when the mind of a human being passed from a state of sanity to a condition of insanity. It was impossible, by the utmost exercise of the intellectual or mental power, to keep the thought fixed upon the circumstance of death even for the duration of a second. We may, in a general philosophi-

cal way, declare that we must all die. But in reference to that sharp point of certain inevitable agony, of destruction, which is the thing called death, we cannot keep our minds upon it even for an instant.

To be capable of doing that for any considerable period of time would necessarily produce a tension of mind and spirit such as would inevitably result in the destruction of the intellect. Yet you might just as well attempt to discover the mysterious point of connection between life and death as between sanity and insanity. This court had already in its decisions given a good illustration, contained in the pamphlet copy of his decisions, of the fact that insanity may be of greater or less duration. No man can measure it. It is not necessary to fix the exact point of time at which it commenced and at which it terminated. In the Day case the instructions to which I specially refer were drawn up by Mr. Carlisle, and it is remarkable how opposite the language of Mr. Carlisle in that case is to the circumstances of this case. We only ask that the same instructions should be given now. I hope my friend would not find it uncomfortable to see his own language in that case now made the instrument of the opposition. If so, he could sympathize in the spirit of the following quotation:

"So the struck eagle stretched upon the plain,  
No more 'mid rolling clouds to soar again,  
Sees his own feather on the fatal dart  
Which winged the shaft that quivers in his heart."

The evidence of the waving of the handkerchief had been admitted without objection, and the court had admitted it to prove the fact of the adultery. For what purpose was this evidence received unless it was intended that it should be offered as a justification? If it is no justification and no excuse what has it to do with this trial? The Court received it also with reference to the state of the prisoner's mind, and so the counsel for the prosecution must have regarded it when they made no objection to the introduction of evidence to prove Mr. Key's maneuvers, watching, sneaking, spying round Mr. Sickles' house, stationing himself in that square, in the presence of the monument (Jackson's) of one who, whatever one may think of his political opinions, was a gallant and brave man. That monument should have held in suspense his depraved lusts while he was standing there inspecting Mr. Sickles' house with an opera-glass. He might be permitted to refer in this connection to the case of a young man who indiscreetly, zealous to serve the purposes of his country, made his appearance within the lines of the enemy's camp, within the territory held by the enemy, was arrested, tried, and condemned to death; he begs for the privilege of a soldier's death; it was refused him, and he was hung high on a gibbet; the commanding officer—that immortal man whose name graces and gives dignity to the city in which we are assembled—refused the request, and Major Andre, in the flower of his life, suffered an ignominious death, applied to him deliberately by one of the wisest and best of mankind, because

he was a spy in the camp of the foe. But here was this spy engaged in the bad effort to commit domestic treason, for which he suffered death—a death, the counsel hope, no good man would regret.

*Mr. Brady* stated in detail the circumstances developed in the evidence, by which the fact of the adultery had been made known to him, and described *Mr. Sickles'* feelings when the truth was forced home upon him. *Mr. Sickles* remarked the confidence he had bestowed on *Mr. Key*; he felt how he had been betrayed; all the emotions of his nature changed into one single impulse; every throb of his heart brought distinctly before him the great sense of his injuries; every drop of his blood carried with it a sense of his shame; an inextinguishable agony about the loss of his wife—an appreciation of the dishonor to come upon his child—a realization that the promise of his youth must be forever destroyed—that the future, which opened to him so full of brilliancy, had been enshrouded perhaps in eternal gloom by one who, instead of drawing the curtain over it, should have invoked from the good God his greatest effulgence in the path of his friend.

He remembered how, in a city where he had come to abide as the guest of the nation—in a city distinguished for its splendid hospitality—a city which for the time he had made his home—the man whom, above all others, he might have expected to cherish and sustain and protect him, had proved to be his implacable, hypocritical, treacherous and detestable foe.

With that great sense of his injuries he rushes out on Pennsylvania avenue, and, although a man who everyone knows, your Honor knows, the jury and spectators know, is measured and steady and even in his gait at ordinary times, he passes with all possible rapidity down Pennsylvania avenue—he attracts the attention of *Mr. Mohun* and of the *Rev. Dr. Pyne*, a learned and estimable gentleman—his eyes are observed—they are vacant in their stare—the expression of his countenance is all altered; each of these gentlemen perceive some great agony, some great affliction, some great change affecting his whole nature, and so he passes to his home. How do you see him there? What are the incidents of the Saturday night? In feverish earnestness he paces that chamber of suffering more ferocious than the caged and starved tiger, thinking through the whole night of nothing but these reflections to which I have alluded and which darkened the past, the present and the future.

Think how, on that Sunday morning, he made this exhibition to which the witnesses have referred, when he saw *Mr. Key* with his opera-glass for inspection or for spying, with his handkerchief to make the adulterous signal, and with the keys in his pocket of the house in Fifteenth street to which he was about to take *Mrs. Sickles* at that moment, if he could obtain her person. There was *Mr. Key*, with all the weapons of moral death around him, going to make war upon *Mr. Sickles* and his wife and child. He is seen by *Mr. Sickles*. He is seen by *Mr. Sickles* to pass his house and to wave his handkerchief, and *Mr. Sickles* exclaimed, as your Honor properly per-

mitted to be proved, that "that scoundrel has passed the window and has waved his handkerchief." Then he disappears from the view of all the witnesses until he comes to the scene of the homicide. Just before Mr. Sickles thus passed out of that house, with the full knowledge that that iniquitous salutation was given to his wife to leave her child and husband on that Sabbath day and to go and be polluted again in that house of bad repute in Fifteenth street. Mr. Key had been standing in front of the club house, or in the park, with his opera-glass in his hand; he saw Mr. Sickles go out and pass up the street in which his house is; at that instant Mr. Key goes round the other way to go round Lafayette Square. Mr. Sickles is now gone and Mr. Key may be a little bolder; he may have a little less caution and more courage than ordinarily; he is now certain of his victim; he has the handkerchief, the opera-glass, the keys, the locks waiting to receive them, the intent in his mind being exclusively to employ all the intellectual of his physical and moral nature to commit the act of adultery; Mr. Sickles sees him thus, as all of us, his counsel undoubtedly think, engaged, within the meaning of the law, in the act of adultery. He sees him engaged in the act, as one of a set of burglars who watches at the corner while his confederate is breaking into the safe of an unsuspecting merchant, is, in the contemplation of law, engaged in the act of burglary.

Mr. Key, with the means of thus having the person of Mrs. Sickles, is there approaching the house of Mr. Sickles, supposing that he had entirely eluded the latter; he is eager, as he thought certain to obtain the wife. At that moment he is met by Mr. Sickles. If that be not taking a man in the act of adultery, I would like the learned counsel for the prosecution to tell me what it was. And if Mr. Sickles, having a weapon in his possession, which he had been accustomed to carry for reasons which we need not declare, with the realization of all these facts pressing down with terrific weight on his mind and heart and soul, thus meeting Mr. Key and understanding thoroughly the vile purpose of his heart, was not to shoot him, I ask my learned brother to tell me what he was to do? I would like to ask all assembled humanity what he was to do. To bid him good morning, to pass him silently by, to avert his eye?

Daniel E. Sickles, a man of unblenching and unvaried courage, as I know from the past associations of our lives, let Philip Barton Key believe that he could not only seduce his wife, but cow him! If he had done anything more or less than became a man, under these circumstances, whatever may have been the intimacy of our past relations, I would have been willing to see him die the most ignominious death before I would venture to raise anything in his behalf but a prayer to heaven for the salvation which after death might come.

He did meet him; he met him under the influence of intense provocation fresh upon him; and here, your Honor, unless I have totally misunderstood the indisputable facts in this case, this question of

cooling time disappears entirely, if, indeed, there is any such thing as cooling time applicable to such a case.

It was not thought so in the case of Bowyer, where a month intervened; and it was not thought so in the other cases, where a longer time intervened. With all deference to your Honor and to my learned opponents, I respectfully submit that the phrase "cooling time" has no kind of application to such a case as we have here, but is confined to cases of combat, collision, affray and physical violence between two contending beings.

We know just as well as we know that there is breath in our bodies that it is idle to talk about cooling time in relation to the husband who knows that his wife has been seduced, whom he pressed closest to his bosom, and if the laws of the land do say that there is any time in a career of twenty millions of years when the indignation of the injured husband grows cool in relation to the adulterer of his wife, I hope I am not irreverent in saying that these laws of man are in direct hostility to the immutable laws of God.

In this connection, and in reference to the subject of malice, which here naturally associates itself with the question of cooling time, I refer to *State against Will*, 1st Dev. & B., 165, and in view of the exclamation made by Mr. Sickles at the moment of the homicide, that the deceased had defiled his bed, the presumption of malice was all gone, and, in the language of the judge in the case referred to, "the act must be referred to the present and declared motive, the effect to its immediate cause, and not for light reasons to any pre-concerted purpose."

There was no evidence in this case that did not necessarily exclude the belief that Mr. Sickles could have had any preconceived motive, any malice, or any deliberate desire of revenge as against Mr. Key. In *Blackstone's Commentaries* it is said: "Of which life, therefore, no man can be entitled to deprive himself or another, but in some manner either expressly commanded in or deducible from those laws which the Creator has given us, the Divine laws—I mean of either nature or revelation. Second—In some cases homicide is justifiable, rather by the permission than by the absolute command of the law, either for the advancement of public justice, which without such indemnification could never be carried on with proper vigor, or in such instances where it is committed for the prevention of some atrocious crime which cannot otherwise be avoided."

It is a well-known principle of law that a man may be convicted of rape even on a prostitute, and that she may, in resisting the aggressor, take his life. But—hear it, men of the universe! hear it, men of the United States!—it is claimed that a man is not permitted by law to do anything for the protection and vindication of his honor: He cannot be raped, but he can have the greatest affront put upon his right; he can have the relations between himself and his wife violated; he can have the legal contract between him and his wife made valueless to him by the ruthless hand of the adulterer; he can have his name made a byword and a reproach, and can have his



wife reduced to a thing of shame, and cannot raise his hand to prevent all this. He can have what more?

Look, your Honor, at Daniel E. Sickles; look at Teresa, that was his wife; look at the woman whom I knew in her girlhood, in her innocence, and for whom in the past, as now, I pray the good and merciful interposition of Heaven to make her future life a source of happiness, and of no more anguish than is inevitable for the repentance to which her life should be devoted!

Look at Mr. Sickles, and look at that poor girl—for positively, although the mother of a child, she is a girl, accessible to the influence of a master intellect, though the sphere of its mastery be even in a region of seduction! And look at that young child, standing between its father and its mother, equally influenced by the great laws of the Creator to go toward either, and destined to leave one! No judgment of Solomon can prevail here; but perhaps, as in the case of the rival mothers, it might be better to divide that poor child in twain, and leave one-half at the feet of each parent, than let it live from the period it has now reached. Look at that case and say whether you may break into the sanctuary of a man's heart, rifle the treasures of his home, betray the friend who confided in you, outrage his hospitality, bring shame upon him, leave him almost hopeless, a wanderer in the world. Now, what says Blackstone on that subject?

"Though it may be cowardice in time of war between two independent nations to flee from an enemy, yet between two fellow subjects the law countenances no such point of honor."

Why, the *naïveté* with which Blackstone always explains a principle of the common law, and with which in this case he appropriates to the Saxons that which they never had, this very trial by jury, which all who investigated the subject know belongs to the Continent, is developed in stating the reason why a man cannot protect his own honor. Because, says he, "the king and his courts are the *vindices juriarum*, and will give to the party wronged all the satisfaction he deserves." This is Blackstone. Is it the duello?

Now, is it not more consistent with the analogies of the law, more consistent with the marital relations, its duties, rights and responsibilities; more consistent with the structure of our government and the character of our people, with our habits, usages, thoughts, feelings, sentiments, principles, to adopt the relations for which my brother Stanton contended with so much power?

Is there anything in the law of the land inconsistent with his great conclusion—a conclusion which all of us arrive at—that this circumstance of consent, employed to distinguish the case of a ravisher from that of an adulterer, can make no difference in regard to its consequences, unless it can be said that the consent of the wife to the pollution of her person is not obtained by a fraud on the established relations of husband and wife. By fraud in law, then, I do not know on what view of duty, of society, or of legal principle any such aspect of the case is or can be presented.

The *District Attorney*. Then what is the difference between adultery and rape?

*Mr. Brady*. Simply that one is made indictable by law and punished with serious consequences, the other is not. So far as the husband is concerned it is utterly unimportant to him whether the offense of the party polluting his wife is that of a ravisher or an adulterer, except, as was well stated by brother Stanton; the party committing the adultery superadds to the deflowering of the wife, the betrayal of all the trust and confidence reposed in him by the husband, and then, in a moral point of view, the adultery becomes the greater offense. And, inasmuch as no use of a man's wife can be made by reason of any consent that she gives, the man who does take and prostitute her to his lecherous purposes commits a fraud upon the law, a fraud on the relations of husband and wife, and a fraud upon the husband. The consent of a child five years of age to taking articles out of her father's house no more avails the thief in such a case than the consent of a woman avails in lessening the crime of a seducer.

This brings me to another of the instructions. The question as to whether, there being doubt on the question of sanity or insanity, that doubt belongs to the prisoner. I will not stop to read the case of the *People vs. McCann*, decided in the courts of New York, where it was fully and plainly determined that in making out a case of murder it is as necessary for the prosecution to prove that the prisoner was sane as to prove any further fact.

I grant that, there being no justification or excuse, the law presumed malice, and the presumption stood for proof; but when, in regard to the element essential to constitute the crime of murder, doubt was thrown on the question of sanity, that was a doubt affecting the case of the prosecution. Whether the doubt related to the fact of killing or to the sanity of the man who killed was utterly immaterial. The question has been mooted before his Honor in the case of *Develin and Ogle*, and as his Honor has considered it, I would abstain from any extended remarks on that particular point.

The *JUDGE*. The case was made and decided at the last June term of this court, in the case of the *United States against Develin*. The Court stated generally that the benefit of the doubt belonged as much to the question of sanity or insanity as to any other matter involved.

*Mr. Brady*. Then, your Honor, I have certainly nothing more to say on that subject.

The *JUDGE*. I think when that case comes to be examined there will be authority found for it.

*Mr. Brady* alluded to the fact that the last report on the lunatic asylums of Pennsylvania showed that of the inciting causes of insanity, that which was by far the most frequent was domestic affliction; whether that result corresponded with the results obtained from other similar institutions, he was not prepared to say; but he did know, and all men knew, that nothing wounds the spirit of a man more than that which assails him in regard to his place of refuge.

When we are tired of the world, fatigued with employment, des-

pairing, sick at heart, or diseased in body, home is the place where we expect to find comfort and repose and solace and sweet society, and that which assails us there is the deepest affront that can be put upon us.

In illustration of this I ask permission, your Honor, to let the refulgence of one of the stars, to which the District Attorney playfully referred in the course of this case, be shed for a moment on my path and on the path of investigation which the Judge and my learned opponent and the jury are to pursue.

I entirely acquit my learned opponent of having intended anything unkind in his allusion to the *dramatis personæ*, in which the heavy gentleman and the light gentleman and the walking gentleman figured. What particular part my learned opponent intended to assign to me I have never yet been able distinctly to understand. When I am a member of any theatrical corps I sincerely hope I may have the benefit of his association. His achievements on this trial show that if the stars are to shine, he may take his place in the galaxy. It is true that a number of learned gentlemen have come to the defense of Mr. Sickles. Two of them came from his own State, of which they, like himself, are natives—my brother Graham and myself.

Gentlemen from other States are here, and there is one here at this table, one of my cherished friends, the friend of Mr. Sickles, who came here, as we who are from New York are expected to come, without fee or reward, or the hope thereof, to offer up in behalf of his friend Sickles, in this hour of his trial, that affection and devotion which he once tendered in behalf of his native land, and for which, as a consequence, he, like Mr. Sickles, was placed in the criminal dock of his native land and subjected to the condemnation of death.

In the share I have taken in this case I have been permitted to avail myself of the great services of the gentlemen around this table, and in the address I have made I have endeavored to speak their sentiments, thoughts, and opinions. I am sorry, indeed, if under their instructions I have been led into anything erroneous.

My friend and brother, Meagher,\* to whom I have just referred, and who gave a dignity to the criminal dock in his native land, which I sincerely hope may be imparted to this dock by the presence of Mr. Sickles on this trial, has asked himself, in relation of that condition of Mr. Sickles, how it was produced, and in relation to the prin-

\* MEAGHER, THOMAS FRANCIS. (1823-1867.) Born Waterford, Ireland; orator of the Irish Repeal Assn. and war director; was arrested in 1848 and transported to Van Diemens Land the next year; escaped to New York, 1852, and admitted to bar in 1855; entered Union army and became a brigadier general, 1862; secretary Terr. of Montana, 1865, and governor in 1866; author of "Speeches on the Legislative Independence of Ireland" and "Recollections of Ireland and the Irish." Drowned near Fort Benton, Mont.

ciples of law which affect it. Immediately on the scene which occurred in this court, of which none of us have lost the recollection, he instituted a legal inquiry and made a suggestion which, as his construction to the cause of his client, I shall quote as quite germane to the matter in discussion.

I will read to the Court the following from a manuscript of Mr. Meagher's: "In connection with this subject, the state of mind in which Mr. Sickles committed the act for which he stands arraigned, you recollect what occurred in court on Tuesday morning, the 12th day of April. A distinguished gentleman was on the stand. In distinct and emphatic words, but, nevertheless, with an emotion which it was plainly perceptible he controlled with severe difficulty, he told us of the distraction, the bitter woe, the wild desolation, the frenzy, the despair, the strange, unutterable, unearthly agony in which he found Daniel E. Sickles on the afternoon of that memorable Sunday, the 27th of February.

"He seemed, said this distinguished witness, his own eyes and heart filling up and overflowing as he recalled the scene—he seemed particularly to dwell on the disgrace brought upon his child. These words set free the tempest that had been so long pent up. As they fell from the lips of Robert J. Walker there occurred here in this very court a scene which, from the memories of those who witnessed it, never will be, never can be, blotted out. All eyes were turned to the dock, every eye was eager, fixed, dilated, quivering; and there was he—he who from the first hour of his imprisonment down to the utterance of those words, had borne himself with a heroic calmness, suddenly overcome and racked with a relentless grief, struck down as though he were himself the motherless and houseless child for whom he wept, smitten to the quick and beaten to the dust, drenched in the gall and wormwood of a tribulation the depth of which no mortal hand can sound, and over the subsiding flood of which no arch of peace can ever shine. There was he, the avenger of the invaded household, of the more than murdered wife, of the more than orphan little one—there was he, in an appalling moment of parental agony, subdued at last. Talk of the mind diseased, talk of the circumstances which unhinge, upset and madden it; talk of the distraction in which a ruthless perfidy had plunged my client and my friend; talk of his condition of irresponsibility when he dealt the fatal blow; talk of this, and with your worrying interrogations strive to elicit the recollection of it from those who, themselves the witnesses of it, were themselves agitated as they never were before. Nature, Heaven, God Himself, in His heart-broken image, here became, here in this very court became, the witness of the torture by which, on that terrible day, the 27th of February, the prisoner was inflamed.

"You beheld the scene of the 12th of April. It was the same as that to which Robert J. Walker testified. Recall this scene. Think of how the proceedings of this court were suddenly arrested by the sobs of the prisoner, when the beautiful image of his poor child was revived by the words of Robert J. Walker, how he was bowed to earth, and how he writhed as though an arrow were buried in his

heart; how, supported by his friends, he was led from this court, his vision quenched in scalding tears, his limbs paralyzed, his forehead throbbing as though it had been bludgeoned by some ruffian, and his whole frame convulsed. Recall this scene. Think of this—think of the tears you shed yourselves as this stricken victim was borne by—think, think of this—and then may we well say to the jury: If your love of home will suffer it, if your genuine sense of justice will consent to it, if your pride of manhood will stoop to it, if your instinctive perception of right and wrong will sanction it, stamp ‘murder’ upon the bursting forehead that has been transpierced with the thorns of an affliction which transcends all other visitations, and for the scandal, the dishonor, the profanation, and, in the end, the devastation which provoked this terrible outburst, this tempest of grief, this agony of despair, as Robert J. Walker described it; for this incalculable wrong, I say, and for this irreparable loss, declare by a verdict for the prosecution, that so many thousand dollars, an appropriation from an economic, or swept right off from a lavish jury, can afford a soothing compensation. Do this, do it if you can, and then, having consigned the prisoner to the scaffold, return to your homes, and there, within those endangered sanctuaries, following your ignoble verdict, set to and teach your imperiled wives a lesson in the vulgar arithmetic of compromising morality, and let them be inspired with a sense of womanly dignity by a knowledge of the value you attach to the sanctity of the household, to the inviolability of the wife, to the security of the honorable roof, and last of all, but above all, to the inherited traditions of an innocent but ruined offspring.”

If the effect produced on the mind of strangers, who witnessed that scene, was so great that many were moved to tears, what must have been the nature of the agitation wrought on the mind of Mr. Sickles. And suppose that the condition in which your Honor and my learned opponents have beheld Mr. Sickles since the trial had received no consolation, had found no vent, had had no alleviation. Suppose that the great, big, full, bursting heart of one oppressed with a sense of terrible wrong could not find in sobs and tears any relief, what would have become of his brain. What did become of the brain of Mr. Sickles when the heart became sterile, except as a place of occupation for that sense of injury, for that desolating influence of mind as well as heart, to which the learned Dr. Pyne referred when he described the appearance of Mr. Sickles as “defiant and desolate.” “Defiant,” your Honor, as poor Meg Merrilies was when she stood by the wayside and made that speech to the Laird of Ellengowan—“desolate” as the hearts which he had invaded, that the memorable outburst of her grief and despair might adorn the pages of him who was called a wizard in the fields of literature.

On this question of sanity, insanity and provocation, we invite your Honor’s careful deliberation and judgment. I wish to say, for all of the counsel on this side, and for our client, that none of us have forgotten the great command of our Maker, “Thou shalt not

kill," any more than we have forgotten that other command, "Thou shalt not commit adultery."

We know, however, that our great Creator did not intend that homicide should be entirely excluded from the hand of man. We know it by the wars which desolate the earth, by the duels, by the killing of adulterers, ravishers and criminals; we know of the right which the law gives, and which is sanctioned by home law, to kill him who in the silence of night, comes as a burglar to rob and desolate our homes. All that we appreciate and of all that we desire to have the benefit, and I will be permitted to say, whatever consequences may result from the declaration, that, in view of all that has transpired in the city of Washington, to whose citizens on this jury, Mr. Sickles commits his life, his character, all that is to elevate or keep him in existence, for in our own confidence in the integrity and judgment of your Honor and the jury, we are convinced that no harm can come to Mr. Sickles out of this trial. In view, also, of the relations of Mr. Sickles toward him before he came to this city, in view of what we know of her, of the extending of this shame from the mother to the child, which we suppose the evidence fixes on Mr. Key, Mr. Sickles might have gone anywhere else in the world but to New York, if he had not resented that dignity. He could never have returned to the city of New York, and been accepted for one instant among any of his former friends.

MR. OULD FOR THE PROSECUTION.

*Mr. Ould* said he had listened, as no doubt the Court had, with great interest and satisfaction to both the arguments addressed to his Honor on the pending instructions, the day before yesterday and today. He admired particularly the ability and candor which marked the argument of Mr. Stanton, who, boldly meeting and presenting this case, marched up to and contested them in all their strength. Not only did he admire the candor of the argument, but the brilliancy, power, and pathos which characterized it. After saying thus much, it would not be amiss for him to remark that the prosecution stands now on a position the same as taken by the other side, to wit, that of denouncing the offense of adultery. The question, however, is not of adultery, but one of murder, and whatever vice and criminality may attach to adultery does not relieve the other and higher offense of murder from the condemnation which the law passes upon it. We admit, in all their fullness, the justice of the denunciations which have been made against adultery, and that it is an offense which cries aloud from heaven for condemnation, and to man for his reprobation, nor do we deny the sacredness of the family relations which have been so pathetically alluded to by the gentleman on the other side, nor their importance to the well-being, the peace and happiness of society.

But, deeper far, and below all such questions as that, lies another, upon which all questions of this kind rest, and from which

they all spring, namely: the sacredness of human life. The family relations, so eloquently portrayed by gentlemen on the other side spring out of the human life; they are such relations as are social in their character, affecting no man individually, but springing out of the relations of society. Human life is the shaft around which all such poetries as this are wreathed. It is the grand trunk which supports the blossoming glories of the family relations. There has never been a civilized nation, never a code of laws, human or divine, where the sacredness of human life did not, first and foremost, receive all the sanctions which human society itself could gather around it. The law made human life its first care, and all concur that both human and divine law unite to give such sanctions to life as will best secure its preservation. It was truly and well said by the learned gentlemen on the other side, that adultery drives a wife from her husband's side, and severs those whom God has joined together. It is true that such iniquity may render desolate the hearthstone, but is it not equally true that by taking away a human life a household may be wrecked? Is one to be cursed by the other? It has been contended by the counsel on the other side, that adultery is sin *malum in se*, but he (Ould) had seen no book, no treatise relating to modern society, where it is so registered.

If so, then the right of punishment not only belongs to the injured husband himself, but to any person, no matter how much a stranger to the husband, who might become a witness of the adultery. It has been contended on the other hand, that there is no mitigation by the provisions to the New Testament—but is this so? In the beautiful illustration of Christianity, which has been read in the hearing of the Court, taken from the record of the loved disciple, the principle, the soul which breathes through it is to be considered, as well as its peculiar phraseology. The sin is there spoken of by our Divine Master; and if the adulteress could receive his forgiveness, it could on the same principle be extended to the adulterer. No evidence has been suggested that previously the adulterer himself had been seized by an enraged multitude, or by the husband, and slain. There is no suggestion in Divine record that any such thing occurred. But, say the learned gentlemen, the Roman law prevailed there. Does that alter the case? The Saviour was there speaking of the nature of the sin, and not interpreting a particular law. Besides, the Roman and Jewish law, so far as parties were caught in the act, was one and identical. In both cases, the sin was visited with the penalty of death, judicially administered; that this was so, must be apparent from the New and Old Testament. In proof of this he referred to Deuteronomy, where the very method of trial, through each successive step, was expressly written down from the mouth of God, and in this case extending to some extent to the principles of our very law. As to him accused of adultery which was so heinous to the Hebrews, it required the testimony of two witnesses to convict him, and the

testimony was to be given before a judicial officer. In illustration of the same fact, in the 31st chapter of Job, 11th verse, where in speaking of the offense of adultery the following language is used:

"For this is a heinous crime, yea it is an iniquity to be punished by the Judges."

The 18th chapter of Ezekiel, 10th verse, shows that not only the adulterer and the murderer, but any man who became a robber, or a shedder of human blood, or an idolater, or a usurer, should receive the same punishment at the hands of the law as the adulterer. Not only is there a command to keep the Sabbath holy, but, on a particular occasion, a party who went out and gathered sticks on the Sabbath was stoned to death. It has been considered by writers on both divine and civil law, that this peculiar judicial system was confined to the Hebrews, given by God himself, and that this judicial system has not such a divine sanction as is expressly commanded to be observed by men in all future time. In the very same chapter of Leviticus, where the penalty of stoning to death is expressly written, the last verse in the same chapter visits the same punishment, without qualification, on parties possessed with familiar spirits, or for being a witch or a wizard; and yet denunciations are launched against an incorruptible Judge and jury in England, because when he sat on the bench carrying out the Divine law, he visited the penalty of death on certain witches and wizards who were brought up for judgment. If, from the fact of this Divine order among the Jews, it was to be considered as authority, so far as adultery is concerned, and its spirit was to be observed in this age, and under our system of law, the eminent jurist was not only correct in his judgment, but in this day it becomes your Honor to visit the same penalty on witches and wizards as well as on usurers. No man can take up the Old and the New Testaments, and look into them with a spirit of candor, without coming to the conclusion that there is the greatest and a marked distinction between the sin of adultery and that of murder.

An illustration was given in the chapter quoted by Mr. Graham, of Simeon and Levi, as an authority conferred by the Divine law for the punishment of the offense of adultery, they having killed the ravisher of their sister Dinah. If it had occurred to the learned gentleman to read further, he would have found that when the aged father was about to gather up his bed, that he might depart to his fathers, when he was inspired by prophecy, and his lips touched, as it were, with a coal from Heaven's altar, he said "cursed be their anger, for it was fierce, and their wrath, for it was cruel." Where is the language for other offenses or crimes? It is written all through the Good Book, in such language that there is no qualification attached to it. He referred to Exodus, chap. 21, verse 12: "He that smiteth a man so that he die, shall be surely put to death;" and Leviticus, 24th chap., 17th verse: "And he that killeth any man shall surely be put to death;" and Numbers, chap. 35, verse 16, "And if he smite him with an instrument of



iron so that he die, he is a murderer; the murderer shall surely be put to death." Nay, more, the avenger of blood himself might follow him and put him to death, etc. It reaches back earlier than that. It was almost the first divine decree made by the Creator with regard to the offense. He referred to the ninth chapter of Genesis, sixth verse, and of the peculiar reason which was given by the mouth of Jehovah why the penalty should be inflicted on the shedder of human blood. "Whoso sheddeth man's blood, by man shall his blood be shed, for in the image of God made He man." "He is the temple of the Holy Ghost," says the New Testament, and he who pursues him for the purpose of assailing him, commits a sacrifice against God as well as an offense against man. He slays what he himself calls divine, and has made his temple.

With regard to the punishment inflicted in former ages on adultery, I prefer to stand on the great monuments of the law with the sanctions and authorities which had been given to them. I do not read the ancient law as it was quoted by the defense, and read from the first book of Blackstone as follows: "If a man takes another in the act of adultery, with his wife and kills him directly upon the spot, though this was allowed by the laws of Solon, and likewise by the Roman civil law if the adulterer was found in the husband's own house, and also among the ancient Goths, yet in England it is not absolutely ranked in the case of justifiable homicide, as in the case of a forcible rape." This distinction is taken, as in common law, making the distinction between the party "caught" and "found," as the word is used by some authors, but subsequently pursues and overtakes the offender and executes summary vengeance. I challenge proof to show that any code had received the approbation of any civilized people wherein the adulterer was allowed to be pursued after the fact and slain. It had not been shown to exist anywhere. In tracing this down, we come to the material point of the inquiry, and the question is, What is the interpretation which the common law put on the act and fact of adultery and murder. The learned gentleman (Mr. Stanton) said the common law of Maryland consists of the maxims which have received general approbation, and suited to the manners, habits, customs and usages of the people, undoubtedly. These maxims now constitute the common law of this District. The law of murder was suited to the manners of the people at the time they colonized Maryland, and from whom we have received it. This principle will apply to new cases, as they arise, and there consists the peculiar merit of common law over the civil law, as our system or code.

The gentleman says the doctrine for which we contend made its first appearance in Manning's case, and, by dint of repetition by Hale, East, Russell and other commentators on the law of England and this country, has heretofore been acknowledged and unquestioned. Could any higher compliment be paid? If it has received the approbation of these judicial experts, could it be presented to

your Honor in a garb to entitle it more to your consideration and reverence. Manning's case, it is said, was decided under Charles II., and that it is the first recorded case where punishment of adultery, whether or not the offender was caught in the act, is to be found in the English books, and that the new law was made then and there for the first time. This I most gravely dispute; I think I can show, to the satisfaction of the Court, that, instead of this being a new law, it was merely an alleviation of law, so far as it is universally regarded and considered by the sages of the common law. I lay it down as a rule of common law, which has been recognized in Manning's case, that, under no circumstances, was murder to be alleviated to manslaughter, except there was an act of assault on a man's person or property, and especially so where the slayer might resort to the use of a deadly weapon.

But there is not a solitary case before Manning's time where the slayer resorted to a deadly weapon, except where an assault had been committed on his person or property, that the offense has been reduced from murder to manslaughter. The reason why this question was never before reported in the books, is that, up to the time of Henry VIII., there was no distinction between murder and manslaughter. Both were clergiable offenses, and up to the time of Charles II. no case came before a court for adjudication. What did the common law say to the Judges who denied the principle? That technically and strictly it was a case of murder, although the party was caught in the act. But the common law undoubtedly meant to alleviate from murder to manslaughter in cases of assault on persons and property. Twisden, in adopting the rule, alleviated it to this extent, and to that extent it has been recognized in the common law.

The learned gentlemen on the other side mistake when they say this rule, with regard to adultery, had its origin in a corrupt age—not only was a merciful interpretation given to the principle, but it was carried still farther, because the Judge ordered the punishment of Manning to be administered gently. It is not my purpose to defend the English judiciary, but I do say that the history of the English people shows that its judiciary has been their great bulwark. The judiciary there established, with a solitary exception which starts up here and there in its iniquity, has stood for centuries, as it were, like an Ararat of the Deluge, the last point that was submerged beneath the waves of tyranny and corruption being the first that lifted itself in the light of day. A material question is, whether the rule then and there adopted has been conformed to by subsequent interpretations. The prosecution has challenged the other side to show a solitary English case where it was questioned. The reports which have come to us, show that where they have come up for judicial interpretation, the same doctrines announced by Reynolds in his reports, have been approved; that before a learned and humane bench in 1445, when the Alagous case came up, the rule was approved. He referred to Fisher's case,

also that of Kelly, where the same bench announced the same doctrine. If it be so heinous a doctrine, so repugnant to the human heart, the learned, able and humane Judge would not have traveled out of his way to give it his express approbation; although in the case of a courtesan, the learned Judge went further in his opinion, and said: "I would be false to my duty were I not to say even if the party were a wife, and should have committed adultery, and been slain by her husband, it would have been murder."

Other authorities have been referred to, which have occurred in the judicial experience of American courts, and two cases, particularly in North Carolina (vol. 8, Iredell, and vol. 3, Jones). One of the learned gentlemen denied the application of the case in vol. 8, Iredell, because it was the case of a slave. In carefully reading, however, it will be seen the learned Judge does not put the law on any such footing; whatever the peculiar relations growing out of slavery, it did not, in his opinion, affect the merits of the case. It stood on a distinct principle, and was treated as standing on the principle of husband and wife, and the law is there set down with clearness and faithfulness. The case of Jones was not liable to the objection. He says, there was evidence of deliberation and express malice. What was the evidence of express malice in that case? In that case the time occupied for deliberation is stated to be only 25 minutes, nay more, the man had gone off with his wife, and in his company about the time. There had been repeated acts of adultery, and the husband was smarting under wrong and outrage, after seeing his wife go off with the adulterer, he pursued him with a wooden mallet, and then and there slew him. I ask, whether the case as put here by the defense, so far as declaration is concerned, goes far beyond the case of Jones.

It is admitted by the other side, that the provocation existed in the prisoner's mind longer than twenty-five minutes, or that number of hours, and so far, therefore, as proof of deliberation is concerned, the present case presents features which would justify the judgment of the law as announced in that spirit more fully than the facts in this case would warrant. Another case has been quoted once or twice—Ryan's case in 2 Wheeler; there is not one single principle of law as announced by the Judge, that is disputed by this prosecution, and when I should have the privilege of seeing the book, I would show the Court that the Judge distinctly put the case on the true and identical privilege claimed by the prosecution in this case.

*April 26.*

*Mr. Ould.* I have been endeavoring to show that the rule adopted in Manning's case was not a lightening of the principle of the common law, but was rather in the nature of an alleviation than otherwise. The doctrine had never gone further than that no act of insult or contumely, and no trespass on property, would justify the slayer in taking the life of the trespasser, and would not reduce the crime from murder to manslaughter. The determination

of the Bench in Manning's case was in consonance with the principles of common law, long established. As adultery was not an assault on the person of the husband, but was only combined of the two provocations of insult and trespass. Then to regard the construction of the law, as understood at that time would have convicted the party of murder. The law then, for the first time, declared that adultery was such a provocation as would reduce the homicide from murder to manslaughter. From that time to this the law had never gone further. It would be very unwise for courts of justice to relax that rule. It would overturn the principles of common law in regard to murder, and would establish the principle that a man could kill another from motives of revenge.

Besides, it could not be restricted to the single crime of adultery but would also have to extend to the case of the defamation of a man's wife; the principle that would allow one would necessarily embrace the other. He referred to Blackstone, where it is laid down that no insult constitutes a justification for homicide, no species of contumely, no species of mere trespass, and no combination of the two had been recognized in either ancient or modern times as an alleviation of the crime of murder to manslaughter. He referred to the case of Smith tried in 1804, where a man shot another who was representing a ghost. The jury brought in a verdict of manslaughter, but the Court refused to receive the verdict, and the jury retired again and brought in a verdict of guilty. These principles had been uniformly recognized and adopted in this country. He referred to the case of Ryan, 2 Wheeler 447, and recapitulated the circumstances of that case and the rulings of the Court. The law there laid down was the law which the prosecution here recognized, and the law by which they were ready to stand. If the theory of the defense were true, that adultery was a justification of homicide, as well as provocation, how could the learned Judge in Ryan's case, have said that the circumstances there might constitute the crime of murder or might constitute the crime of manslaughter. There was an entire uniformity of judicial interpretation running through all the cases reported. In the case of Jarboe, the question was distinctly propounded to his Honor whether, if the deceased had seduced the prisoner's sister, and committed all the turpitude charged in the case, it constituted either provocation or justification, and his Honor had decided that it amounted to neither. In the two Virginia cases, Bouyeris and Hoyt's, cited yesterday, there was no trial before a Judge. They were not to be controlled in this by the *ipse dixit* of a magistrate court, composed probably, of men who knew nothing about law. In Singleton Mercer's case, the whole energies of the defense were directed to the solitary and exclusive issue of insanity. So it was in Smith's case in Philadelphia. As to Stump's, in Maryland, he did not know what the facts were—but if Judge Legrand there decided that adultery constituted either justification or legal provocation, except where the parties are caught in the act, he would like to see such decision.

*Mr. Magruder.* The jury so held.

*Mr. Ould.* It was argued here that the deceased was virtually killed in the act of adultery, and that, therefore, the homicide was committed on legal provocation. In the cases cited to support that theory the question was what constituted proof of adultery. But the question here was not what constituted proof of adultery, but what constituted proof of "finding" in the act of adultery. There could not be any proximate fact with regard to that—there was but one method of proving it. The proof must be that the party was "found caught surprised," in the act of adultery. The waving of the handkerchief, and the occupation of the house in Fifteenth street might tend to show that in this case adultery was committed, but they did not tend to show that the parties were "found" in the act. If they were, then the law says the homicide may be reduced to manslaughter—but if the husband pursue the adulterer and slay him out of revenge, it was murder. The very phraseology of the rule showed that it was not intended to apply to the proximate facts, but as to whether the party was found in the act.

The counsel for the defense had contended, that even if the wife had consented, still the adultery was forcible. He asked then, and he asked now, whether, if that were so, the distinction between rape and seduction was not obliterated. If forcible, it was rape, and if rape, then the defense had wasted all their thunder, for Philip Barton Key might have been indicted by the grand jury and visited with condign punishment. He understood why the defense had started such a theory—they knew that before a party was justified in using a deadly weapon the aggressor must have used actual force, otherwise the killing would be aggravated murder. Thence the counsel for the defense had striven to show that every act of adultery was necessarily an act of force. That, however, was neither law nor common sense. There was no foundation for such a theory in nature, in morals, or in law. It had been set up by the other side that adultery was *malum in se*, and that the protection of a right was never an act of lawless violence. He held, however, that the party is limited by the law to just that degree of defense of his right which the law gives him, and not to follow his own passions and desires. It is the right of a creditor to have his debt paid to him by his debtor, but it does not follow that he has the right to take the law into his own hands and commit an assault and battery on his debtor. The law limits the resorts which a man has for the defense and maintenance of his rights. The last ground which the defense assumed was that this case stood on the great doctrine of self-defense. Self-defense against what? Did the principle of self-defense apply to a past transaction in any sense?

Such a theory excluded all the past and all the provocation, and stood upon the right which the injured husband had to protect himself in the future. Once the injury is consummated against a man,

his rights of self-defense are ended. The law of self-defense never, therefore, applies to a past transaction, and can never be confounded with the law of vengeance. Was that doctrine properly applied? His Honor had decided that it was not material to show that there was actual danger, but that the party supposed there was. To extend that principle to this case it would follow that, whether the adultery was ever committed or not, provided the injured husband supposed it was, then if he sallied out and shot the person who he supposed had injured him, he would be justified. That, gentlemen of the jury, could not be law; society could not exist on any such basis, and human civilization would be an impossibility. It would follow as an inevitable consequence from this, where the prosecution cannot go into the antecedents of the party, that the prisoner himself may be stained with corruption; that throughout the whole course of his life he may have proved himself totally regardless of the calls of duty and insensible of conjugal propieties; that, to use the language of my associate, though I do not mean to apply it to this case, he may have been bred in brothels—nay, that he may have offered his own wife for a price to the very man whom he slew; and that all this cannot be given in evidence before the Court and jury, but that under these circumstances, although he may have committed an act of homicide, he is to be justified on the ground of suspicion. All these doctrines, these abominations, flow necessarily from the doctrine of self-defense as sought to be applied to this case.

Was there, he asked, any danger of bodily harm to Daniel E. Sickles at the hands of Philip Barton Key at the time of the homicide? If not, he put it to his Honor and the jury that the principle of self-defense could not apply. Nay, more. If Mr. Sickles believed that Mr. Key was then and there proceeding to his house for the purpose of committing a felony much less a misdemeanor, the principle of self-defense could not apply as a justification. It had been said by the defense that unless their doctrine was announced by this Court and sustained by this jury, the doors of the people of this District would have to be closed. Standing here, he said, not as a public prosecutor but as a private citizen, I, on the part of the people of this District, denounce the doctrine that the protection of the wife's or daughter's virtue is to be found in the husband's or brother's revolver. It may do for other countries, for other climes, and for other religions, where the law of force as applied to woman is carried out in all its violence and wrong, but not in a Christian community, where woman is ennobled and dignified and elevated by Christian law, and male chastity is to be found in the woman's own virtue and in her own character. Stronger than the bars and bolts, the flash of woman's virtue is as quick as God's lightning and as sure. Far more effectual is it for silencing seducers or revellers in licentiousness than Deringer or revolver. Every pure woman necessarily, and by the gift of God, in Christian communities carries that weapon along with her.

There is no seducer, no villain, I care not from whence he comes or how he may have trained himself in the arts of seduction, who can resist the showing of that weapon for one solitary instant. I thank God that the matrons and maids of our land have a surer protection than the pistol or the bowie knife. Sad, indeed, would be their fate if it were not so. If it were so, one-half of this whole community would not use a weapon and the other half would use it wrongfully and improperly. The spirit of virtue which God had implanted in the woman's heart tells her as if by the flash of lightning what are the intentions towards her of a man, whether honorable or dishonorable, and she has but to use for one moment this gift which God in his benevolence and bounty has given to her for the purpose of silencing and stifling, not in death but in shame, to the proposer every offer that would imply the slightest touch of contamination or of insult. It is found everywhere. It is a circle of glory which adorns the female brow and sheds its blessed and happy light alike on hovel and on palace. It stands there as the protector of the wife, though the husband may be on distant seas, far away from home with his protecting arm. It is there ready to assist at a moment, and to resist effectually, the advance of every slimy reprobate who under the guise of friendship or of fraud walks into the house of purity for the purpose of defiling one of its inmates. The very moment you bring the law of force for the purpose of protecting female honor, that moment you sacrifice female honor. If it is to be protected by the sword, the knife and the pistol, it is unworthy of protection. Unless it be that God-ennobling nobility in and of itself, and unless it exists of itself and for itself, it is unworthy to be cherished or known.

The history of the world has shown that to be true. Go back as far as you please and trace history from the earliest dates down to the present time, examine all eras and all examples, and I say that it stands out on the pages of history, at all times and throughout each one of its lustres, as the fixed and recorded truth that wherever woman has been left alone to the vindication of her own virtue, and wherever man has kept the contaminating hand of violence from her for the purpose even of protecting her, she has risen in her purity, God-ennobled and self-vindicated. The great God of Heaven has laid his hand with consecration on the fair head of virtue, and when the virtuous woman ceases to be her own protector and her own guardian by force of the power which God has given to her, she and her virtue both sink into the dust and in its stead rises the crest of murder and violence and of wrong and of debauchery. The learned gentleman (Mr. Stanton) said that when the law does not or cannot give redress, it is left to natural right. It is not necessary to rebut this position, although we think it could be successfully. It certainly gives no right of vengeance. In 4th Book of Blackstone, page 6, the doctrine on which the defense seems to rest is utterly exploded by this commentator.

The theory of law is not contradicted that every man is presumed to consent to the laws of society which are made in behalf of society.

The law punishes murder, but it is said it does not properly punish adultery, and therefore a man may say I am remitted to my original rights for punishing where the law does not inflict punishment. This is manifestly an absurdity. According to the first theory it is man's duty to acquiesce in such laws as are positively made. There is a positive law of this community with regard to murder, and according to all rational theory the prisoner has assented, or is supposed to have assented, to that enactment. He is prohibited from committing murder, and although the law might not have a specific punishment for adultery, he is not, therefore, privileged to supply such a defect. Although he may have a right to punish, he has no right to violate another provision; if he does, he becomes a wrong-doer. Although he may have a right to redress a wrong, yet he has no right to redress it by an infraction of the human compact into which he has entered.

The arguments of Mr. Stanton he understood as contending that the jury are the judges of the law as well as the facts. But the administration of the law is divided into three different compartments. The judge has his functions, the jury have their functions, and the Executive his. Who wears the *gladis justicial*? If he had read the law aright, it was for the court to pass on all questions of law; it was for the jury to pass on all questions of fact, and the duty of the Executive, under the Constitution of the United States, to decide on the propriety of inflicting the punishment. These functions are separate and distinct, and when one trenches on the other, a usurpation is committed. The court has not only to decide the question of law, but all the law which belongs to the case. It made no matter whether it be criminal or civil law, the very moment it becomes a question of law it becomes the court to decide it. It becomes the jury to find the facts and to apply the law as it is laid down by the court.

A question of justification, malice, or provocation is a matter of law, and cooling time is question of law. In 5th Cranch was embodied the remark of Judge Story: "That it is the duty of the court to instruct the jury as to the law, and the duty of the jury to follow the law thus laid down. In addition, the Constitution of the United States has imposed on the President a certain duty to perform, in connection with the administration of public justice—namely, the pardoning power. This, by the true policy of the law, is given to the Chief Magistrate for the express purpose of keeping the court within its functions, and the jury within theirs; also with the view of preventing gross and aggravated injustice from being perpetrated on a party under a form of law." As the circumstances of this case had been referred to by the defense, he would say, in reply, a pistol was found.

His learned and distinguished friend (Mr. Brady) inquired to whom did it belong and who used it? He (Mr. Ould) should not pretend to give the answer; he would let the witness speak. Mr. Van Wyck said he saw a pistol in the hand of Mr. Sickles. Mr.



Read, the clearest witness, whose statement seemed the most coherent, said he saw a pistol in Mr. Sickles' hand at the very spot; and, further, that no pistol was in the hand of Mr. Key at that time. Not only had Mr. Key no pistol at that time, but he had none at any time. Not a solitary witness had stated any pretense of the fact. Who, then, had the pistol and who fired it? To whom did it belong? It must have been the man who was seen to have a pistol. And in the same connection it was asked why not produce witnesses to show that Mr. Key was not in the habit of going armed? Was it incumbent on the United States to show that he was not in the habit of going armed when there was no pretense that he was armed at all?

*Mr. Brady.* You have not forgotten that we offered to show that Mr. Key said he was prepared for any emergency, at the same time placing his hand on the breast pocket of his coat.

*The District Attorney.* I am speaking of the testimony in the case. His Honor's ruling was that that did not shed any light on the question, and was immaterial.

*Mr. Brady.* But I understand you now to say that there is no pretense that Mr. Key was armed. I pretend that he was armed.

*The District Attorney* said that he spoke only of the testimony; but if the gentleman wanted to give evidence to the jury to show who used that pistol, why did not the defense summon Mr. Butterworth? The defense complained that the prosecution did not produce the friends of Mr. Key to give the negative proof that the deceased did not carry arms habitually; but why did not the defense itself produce that friend of Mr. Sickles who witnessed the whole transaction and who could say positively who it was that used the pistol in question? The defense had referred to the case of Mingo, but that was a case of mutual combat. The plea in Mingo's case was a plea of self-defense, and that was so sustained by the evidence that the judge had the impression that it was a case of self-defense. But in this case the evidence was put upon the issue that Mr. Sickles intended to kill Mr. Key, and that he was justified in killing him. Counsel for the defense had argued that cooling time applied only to cases of mutual combat; the principle of cooling time did not apply.

*Mr. Brady.* Cooling time as to the adultery.

*The District Attorney.* It seemed to be a *concessum* in this case that there was an intention to kill. Now, he held that where there was an intention to kill, that is a proof of malice. Malice and the intent to kill were the same thing. If the defense claimed the exclamation of Mr. Sickles as proof that at the moment of the homicide there was no malice, he asked could he not refer to that other declaration wherein the prisoner followed up the first declaration by the question, "Is the d—d villain dead?" To his mind that inevitably proved malice.

His learned friend (Mr. Brady), in one of his airy wheelings, had said that if Philip Barton Key could be put upon the stand he

would say so and so. I would to God, said the District Attorney, that Philip Barton Key could be put upon the stand. Perhaps much that is now dark, much that is now covered with gloom, much that is now not understood could be made plain as if by the flashing of the sunbeam. Perhaps the gentleman (Mr. Brady) might be put in possession of facts of which he does not now dream and which he does not now believe to exist. It might show a very different transaction from that which has been painted by the evidence.

The only party who could array facts in his defense or in his behalf has been silenced in death, and the testimony which might have been adduced for the purpose of vindicating his character is unknown and unheard therefore. So far as he is concerned it is the same as if that testimony had never existed. He might have shown, perhaps, that although sinning himself, he was sinned against; that, instead of, as has been charged in this case, his entering into the house of his bosom friend for the purpose of wronging him, malignantly and violently, in defiance of all the laws of God and man, and of the sacred obligations of friendship, he himself was seduced by the temptations repeated and continued until those higher moral bulwarks that should have supported his character gave way beneath repeated shocks. I say not whether it was so or was not so; the only party that could have had the opportunity of bringing that evidence here and vindicating his character is gone.

*Mr. Brady.* The District Attorney will recollect that we offered to prove his own declaration that this was a mere child and that he stood in parental relations to her.

*The District Attorney.* There was but one other position to which he would allude, and that was the connection of this question with insanity. The matter of insanity had been frequently under the consideration of this Court, and he would therefore simply refer to some doctrines which, with great solemnity and authority, had been given at other times, bearing on the question now under discussion. He would refer particularly to the opinion rendered by the twelve judges in England in the *McNaughton* case, in response to certain queries propounded by the House of Lords. That decision, as rendered by Chief Justice Tindall, appeared to him a model, not only of eloquence but of judicial learning.

His Honor himself had decided that it was not necessary for the United States to prove the sanity of the accused. This plea of insanity was in the nature of a special defense—nay, in the nature of a plea of confession and avoidance. It was necessary for such a plea to be proved to the satisfaction of the jury. If a suit were brought against a married woman on a bond, and if she pleads that she is a married woman, unless she succeeds in satisfying the jury of the truth of that plea, issues of law and fact are both found against her.

*Mr. Brady.* How would it be if the general issue was on record?

*The District Attorney.* The question cannot arise except on a

plea of confession and avoidance, and that admits the plaintiff's case; so a plea of insanity admits the charge.

*Mr. Carlsle.* The confession stands without the avoidance.

*The District Attorney.* Certainly. He would not put to his Honor the argument as to the facility with which insanity may be simulated or feigned, and how wrong it would be to let the party accused thus escape the just punishment which his crimes should bring down on his guilty head.

### THE INSTRUCTIONS TO THE JURY.

JUDGE CRAWFORD. Gentlemen of the jury: The Court is asked to give you certain instructions, whether on the part of the United States or on the part of the defense. I will read you those instructions and will follow each with my directions to you as to them. The following instructions are submitted for the prosecution:

I. If the jury believe, from the evidence in this whole cause, that the prisoner, on the day named in the indictment, and in the county of Washington aforesaid, killed the said Philip Barton Key by discharging at, against, and into the body of him, the said Philip Barton Key, a pistol or pistols loaded with gunpowder and ball, thereby giving him a mortal wound or wounds, and that such killing was the willful and intentional act of the prisoner and was induced by the belief that the said deceased had seduced his (the prisoner's) wife, and on some day or days, or for any period definite or indefinite, prior to the day of such killing had adulterous intercourse with the said wife, and that the prisoner was not provoked to such killing by any assault or offer of violence then used and there made by the deceased upon or against him, then such willful and intentional killing, if found by the jury upon the facts and circumstances given in evidence, is murder. But such killing cannot be found to have been willful and intentional in the sense of this instruction if it shall have been proven to the satisfaction of the jury upon the whole evidence aforesaid that the prisoner was in fact insane at the time of such killing.

The first instruction asked for by the United States embodies the law of this case on the particular branch of it to which it relates, and is granted with some explanatory remarks as to insanity, with a reference to which the prayer closes. A great English judge has said on the trial of Oxford, who shot at the Queen of England (9 Carrington and Paine's Reports, 533), "That if the prisoner was laboring under some controlling dis-

ease, which was in truth the acting power within him, which he could not resist, then he will not be responsible." Again: "The question is whether he was laboring under that species of insanity which satisfies you that he was quite unaware of the nature, character and consequences of the act he was committing, or, in other words, whether he was under the influence of a diseased mind and was really unconscious at the time he was committing the act that it was a crime." A man is not to be excused from responsibility if he has capacity and reason sufficient to enable him to distinguish between right and wrong as to the particular act he is doing, a knowledge and consciousness that the act he is doing is wrong and criminal and will subject him to punishment. In order to be responsible he must have sufficient power of memory to recollect the relation in which he stands to others, and in which others stand to him; that the act he is doing is contrary to the plain dictates of justice and right, injurious to others, and a violation of the dictates of duty. On the contrary, although he may be laboring under a partial insanity, if he still understands the nature and character of his act and its consequences, if he has a knowledge that it is wrong and criminal, and a mental power sufficient to apply that knowledge to his own case, and to know that if he does the act he will do wrong and receive punishment, such partial insanity is not sufficient to exempt him from responsibility for criminal acts. (7 Met., 500-503.)

II. If the jury believe, from the evidence, that the deceased was killed by the prisoner by means of a leaden bullet discharged from a pistol, such killing implies malice in law, and is murder.

III. That the burden of rebutting the presumption of malice by showing circumstances of alleviation, excuse, or justification rests on the prisoner, and it is incumbent on him to make out such circumstances to the satisfaction of the jury, unless they arise out of the evidence produced against him.

The second and third instructions asked for by the United States are granted.

IV. That every person is presumed to be of sound mind until the contrary is proved, and the burden of rebutting this presumption rests on the prisoner, with the addition of the matters set forth in the next instruction (No. V).

The fourth instruction asked for by the United States is answered by prayer eleven of the defense.

V. If the jury believe, from the evidence, that the deceased, previous to the day of his death, had adulterous intercourse with the wife of the prisoner, and, further, that the deceased, on the day of his death, shortly before the prisoner left his house, made signals, inviting to a further act or acts of adultery, which said signals, or a portion of them, were seen by the prisoner, and that, influenced by such provocation, the prisoner took the life of the deceased, such provocation does not justify the act or reduce such killing from murder to manslaughter.

The fifth instruction asked for by the United States, the Court thinks, is the law and grants the instruction.

The following instructions are submitted for the prisoner:

I. There is no presumption of malice in this case if any proof of "alleviation, excuse, or justification" arise out of the evidence for the prosecution. (State v. John, 3 Jones, 366; *McDaniel v. State*, 8 S. & M., 401; *Day's Case*, 17, pamphlet.)

There is, gentlemen, a legal presumption of malice in every deliberate killing, and the burden of repelling it is on the slayer, unless evidence of alleviation, mitigation, excuse, or justification arise out of the evidence adduced against him. The alleviation, mitigation, excuse, or justification must be such as the law prescribes, and within the limits already laid down in the instructions given to you.

II. The existence of malice is not presumable in this case if on any rational theory, consistent with all the evidence, the homicide was either justifiable or excusable, or an act of manslaughter. (*Cited*; *U. S. v. Mingo*, 2 Curt. C. C., 1; *Com. v. York*, 2 Ben. & Heard Crim. Cas., 505.)

In regard to the second instruction asked for by the defense, I would say: The answer to the first prayer will be taken in connection with his response to prayer number two: "If upon any course of reasoning consistent with all the evidence" and the law as laid down to you by the Court, and the rules by which it is ascertained what is legal provocation, what is justification or excuse, you should come to the conclusion that there

was such justification or excuse, or that the homicide was manslaughter, then the presumption of malice which every killing of a human being involves is met. You will recollect that manslaughter is the killing of a man without malice.

III. If, on the whole evidence presented by the prosecution, there is any rational hypothesis consistent with the conclusion that the homicide was justifiable or excusable, the defendant cannot be convicted.

The third prayer on the part of the defense is answered in the same manner as prayer number two.

IV. If the jury believe that Mr. Sickles, when the homicide occurred, intended to kill Mr. Key, he cannot be convicted of manslaughter.

The fourth prayer the Court declines to grant. Manslaughter may exist, and most frequently does, where the slayer intended to destroy life, but under circumstances which reduce the offense.

V. It is for the jury to determine, under all the circumstances of the case, whether the act charged upon Mr. Sickles is murder or justifiable homicide. (Ryan's Case, 2 Wheeler Crim. Cas., 54.)

The fifth prayer cannot be granted, for to the jury belongs the decision of matters of fact, and to the Court the decision of matters of law, which it is the duty of the jury to receive from the Court; and from the evidence and the law applied to the facts it is the province and legal right of the jury to return a verdict of guilty or not guilty of murder or manslaughter.

VI. If the jury find that Mr. Sickles killed Mr. Key while the latter was in criminal intercourse with the wife of the former, Mr. Sickles cannot be convicted of either murder or manslaughter.

In regard to the sixth instruction for the defense, I would remark: If this prayer refers to actual (existing at the moment) adulterous intercourse with the wife of the prisoner, the slaying of the deceased would be manslaughter. And by

existing adultery I do not mean that the prisoner stood by and witnessed the fact of adultery progressing, for it is easy to suppose the actual fact to be established simultaneously with the killing by other evidence and perfectly consistent with the law; if, for instance, the husband saw the adulterer leave the bed of the wife, or shot him while trying to escape from his chamber. If, however, a day or half a day intervene between the conviction of the husband of the guilt of his wife and the deceased, and after the lapse of such time the husband take the life of the deceased, the law considers that it was done deliberately, and declares that it was murder. (*Jarboe's Case.*)

VII. If, from the whole evidence, the jury believe that Mr. Sickles committed the act, but at the time of doing so was under the influence of a diseased mind, and was really unconscious that he was committing a crime, he is not in law guilty of murder. (*Day's Case*, 9, pamphlet.)

VIII. If the jury believe that from any predisposing cause the prisoner's mind was impaired, and at the time of killing Mr. Key he became or was mentally incapable of governing himself in reference to Mr. Key, as the debauchee of his wife, and at the time of his committing said act was, by reason of such cause, unconscious that he was committing a crime as to said Mr. Key, he is not guilty of any offense whatever. (*Day's Case*, 17, pamphlet.)

The seventh and eighth instructions can be answered together. They are granted.

IX. It is for the jury to say what was the state of the prisoner's mind as to the capacity to decide upon the criminality of the particular act in question—the homicide—at the moment it occurred, and what was the condition of the parties, respectively, as to being armed or not at the same moment. These are open questions for the jury, as are any other questions which may arise upon the consideration of the evidence, the whole of which is to be taken into view by the jury. (*Jarboe's Case*, 20, pamphlet.)

In reply to the ninth instruction the Court responds thus: "It is for the jury to say what was the state of Mr. Sickles' mind as to the capacity to decide upon the criminality of the homicide, receiving the law as given to them in relation to the degree of insanity, whether it will or will not excuse, they

was such justification or excuse, or that the homicide was manslaughter, then the presumption of malice which every killing of a human being involves is met. You will recollect that manslaughter is the killing of a man without malice.

III. If, on the whole evidence presented by the prosecution, there is any rational hypothesis consistent with the conclusion that the homicide was justifiable or excusable, the defendant cannot be convicted.

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(the jury) finding the fact of the existence or nonexistence of such degree of insanity." The gist of this prayer is, "What was the condition of the parties, respectively, as to being armed or not at the same moment?" So much of the instructions I have now read I grant without qualification.

X. The law does not require that the insanity which absolves from crime should exist for any definite period, but only that it exists at the moment when the act occurred with which the accused stands charged.

The tenth instruction is granted. The time when the insanity is to operate is the moment when the crime charged upon the party was committed, if committed at all.

XI. If the jury have any doubt as to the case, either in reference to the homicide or the question of sanity, Mr. Sickles should be acquitted.

This instruction, as I mentioned in referring to prayer four of the United States, will be answered in conjunction with it.

It does not appear to be questioned that if a doubt is entertained by the jury the prisoner is to have the benefit of it. As to the sanity or insanity of the prisoner at the moment of committing the act charged, it is argued by the United States that every man being presumed to be sane, the presumption must be overcome by evidence satisfactory to the jury that he was insane when the deed was done.

This is not the first time this inquiry has engaged my attention. The point was made and decided at the June term, 1858, in the case of the United States v. Kevlins, when the Court gave the following opinion, which I read from my notes of the trial:

This prayer is based on the idea that the jury must be satisfied beyond all reasonable doubt of the insanity of the party for whom the defense is set up. Precisely as the United States are bound to prove the guilt of a defendant to warrant a conviction. I am well aware, and it has appeared on this argument, that it has been held by a court of high rank and reputation that there must be a preponderance of evidence in favor

of the defense of insanity to overcome the presumption of law that every killing is murder; and that the same court has said that if there is an equilibrium, including, I suppose, the presumption mentioned as to evidence, the presumption of the defendant's innocence makes the preponderance in his favor.

Whether a man is insane or not is a matter of fact. What degree of insanity will relieve him from responsibility is a matter of law, the jury finding the fact of the degree, too. Under the instruction of the court, murder can be committed only by a sane man. Everybody is presumed to be sane who is charged with a crime; but when evidence is adduced that a prisoner is insane, and conflicting testimony makes a question for the jury, they are to decide it like every other matter of fact, and if they should say or conclude that there is uncertainty, that they cannot determine whether the defendant was or is not so insane as to protect him, how can they render a verdict that a sane man perpetrated the crime.

Nor is this plain view of the question unsupported by authority. In the case of the *Queen v. Levy*, in 1840 (Lewin, C. C., 239), on a preliminary trial to ascertain whether a defendant was sufficiently sane to go before a petit jury on an indictment, Hullock, B., said to the jury: "If there be a doubt as to the prisoner's sanity, and the surgeon says it is doubtful, you cannot say he is in a fit state to be put on trial." This opinion was approved in the *People v. Freeman*, 4 Denio, 9. This is a strong case, for the witness did not say the prisoner was insane, but only that it was doubtful whether he was so or not. The humane, and, I will add, just, doctrine that a reasonable doubt should avail a prisoner belongs to a defense of insanity as much, in my opinion, as to any other matter of fact. I believe, gentleman, that that answers all the questions.

*Mr. Chilton.* If it please the Court, I rise to renew the proposition which we made on Friday last, to submit this case to the jury without further discussion.

*The District Attorney.* We accept it.

*Mr. Chilton.* I was going on to remark that I had the hap-

piness to believe, from what was said on that occasion, that this proposition would be acceded to. I merely wish to state to the Court that I make it with the concurrence of all the counsel for the defense, and, of course, with the entire approbation of the prisoner; and while with some of your Honor's rulings we may not be entirely satisfied, yet we most respectfully submit. We think, that it is due to everyone connected with this trial, more especially to the jury, to commit this case now to their hands; that they may be relieved as early as possible from the very onerous duty that has been imposed upon them.

The *District Attorney*. On the part of the prosecution we concur entirely in the proposition just made, and on the instructions of your Honor we submit the case now to the consideration of the jury.

*Mr. Brady*. With the effect of your Honor's ruling, I am entirely satisfied.

The *JUDGE*. Mr. Marshal, give the indictment to the jury.

The indictment was handed to Mr. Reason Arnold, and the jury retired to their consultation room.

At the end of 70 minutes the door is opened. They come in and take their seats in the box.

The *Clerk*. Daniel E. Sickles, stand up and look to the jury. How say you, gentlemen; have you agreed to your verdict?

*Mr. Arnold*. We have.

The *Clerk*. How say you; do you find the prisoner at the bar guilty or not guilty?

*Mr. Arnold*. Not guilty.

*Mr. Stanton*. I now move that Mr. Sickles be discharged from custody.

*JUDGE CRAWFORD*. The Court so orders.

## THE TRIAL OF JOHN HART FOR OBSTRUCTING THE UNITED STATES MAIL, PHILADEL- PHIA, PENNSYLVANIA, 1817.

### THE NARRATIVE.

The statutes of the United States for more than a century have made it a penal offense for any one to obstruct or interfere with the Mail. One day a Philadelphia policeman observed that the coach which was carrying the mail out of the city was being driven much faster than the law allowed, and shortly afterwards when the streets were covered with snow, he noticed the same mail coach, now on runners, was going very silently, as the horses had no bells on them. Remembering that the city ordinance said that no one should drive through the streets at an immoderate speed nor any carriage on runners without bells to the horses, he thought it his duty to stop the coach and take the driver into custody. This, of course, stopped the mail for several hours and the policeman was himself arrested and indicted for obstructing the passage of the United States mail. But the Court and jury thought the mail carrier, being in the act of breaking the law, was liable to be arrested even though he was a federal officer, and that the policeman's act was legal and justifiable.

### THE TRIAL.<sup>1</sup>

*In the United States Circuit Court, Philadelphia, Pennsylvania, April, 1817.*

HON. BUSHROD WASHINGTON,<sup>2</sup> *Judge.*

*April 12.*

The *prisoner*, who was one of the high constables of the City of Philadelphia, was indicted under Laws United States., Vol.

<sup>1</sup> Wheeler's Criminal Cases; see 1 Am. St. Tr. 108; Peter's Circuit Court Reports; Federal Cases; St. Paul, West Publishing Co.

<sup>2</sup> See 11 Am. St. Tr. 189.

IV, page 292, for knowingly and willfully obstructing the passage of the mail. He pleaded *not guilty*.

#### THE EVIDENCE.

It was proved that the defendant was one of the high constables of the city of Philadelphia; that he did, on one occasion, stop the mail stage having the mail in it, in its passage through Market street to the postoffice, upon the ground that the stage was going at an immoderate rate, so as to endanger the lives and safety of the citizens. On another occasion it was stopped by him in Chestnut street because the stage body containing the mail, was placed on runners in consequence of the ground being covered with

snow, and no bells were placed on the horses.

The prisoner called several witnesses to prove that the stage was passing very rapidly through Market street, at the time it was stopped. Some of the witnesses supposed it to be at the rate of eight or nine miles an hour. He also introduced an ordinance of the city, which subjected every person to a fine who should drive at an immoderate rate in the city, so as to endanger the citizens thereof, or who should drive a carriage on runners without bells to the horses.

*The Prisoner's Counsel.* This ordinance afforded a complete justification to the constable; or, if not, the driving, in a populous street in such a manner as to endanger the safety of the inhabitants, amounted to a breach of the peace at common law, in which case, the constable is authorized, without warrant to arrest the party, and if he can to prevent the mischief which seems to be threatened. If so, the act of Congress ought not to be so construed as to render it criminal in any person to prevent a mail driver from breaking the peace, because a stoppage of the mail may be the consequence of such prevention. Such a stoppage, it is contended, is not within the meaning of the law. It should be some act performed with the intention to stop the mail, and not one where the stoppage of the mail is the consequence of a lawful act.

There is no part of the Constitution which authorizes Congress to pass laws to punish acts of this kind; but if the law be constitutional, then the 35th section of the law vests the jurisdiction in cases of this kind in the State courts, and consequently, this Court has not jurisdiction.

JUDGE WASHINGTON (to the jury): It is unnecessary, at

this time, to enter into an examination of the objections made to the constitutionality of this law, and to the jurisdiction of this Court, as the defendant may have the full benefit of them on a motion in arrest of judgment, if the verdict should be against him, and there should be anything in the objections. I shall merely observe for the present, that by passing them over, it is not to be understood that the Court means, in any respect, to countenance them.

If the ordinance of the city is in collision with the Act of Congress, there can be no question but that the former must give way. The Constitution of the United States, and the laws made in pursuance thereof, are declared by the Constitution to be the supreme law of the land; and the judges both of the Federal and State Courts, are bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding.

But, there is in truth no collision between this ordinance and the Act of Congress on which this indictment is founded. If the mail carrier should violate the ordinance, the Act of Congress does not shelter him from the penalty imposed by the ordinance. But the ordinance does not authorize any officer to stop the mail, and, consequently, he cannot justify his having done it, under that ordinance.

The defendant's counsel have then resorted to the common law, which authorizes a constable, without a warrant, to prevent a breach of the peace; and it is contended, that for any person to drive through a populous city, at such a rate as to endanger the lives or the safety of the inhabitants, amounts to a breach of the peace.

This view of the subject presents two questions. First, Was the mail carrier in the act of breaking the peace, at the time when he was stopped by the defendant? and if he was, then, secondly, would this fact excuse him under a fair interpretation of the law under consideration?

As to the first question, the Court is of opinion that driving a carriage through a crowded or populous street at such a rate or in such a manner as to endanger the safety of the in-

habitants, is an indictable offense at common law, and amounts to a breach of the peace. But, whether in the two cases stated in this indictment, the mail carrier so conducted himself as to come within this principle, is a question proper for the jury to decide. If they decide this fact affirmatively, then upon the principles of the common law, the constable was authorized without a warrant, to prevent the peace from being broken.

The second question will depend upon the fair construction of the Act of Congress, and we are of opinion that it ought not to be so construed as to shield the carrier against this preventive remedy, because a temporary stoppage of the mail may be the consequence. Suppose the officer had a warrant against a felon who had placed himself in the stage, or that the driver should commit murder in the street in the presence of an officer, and then place himself on the box; could it be contended that the sanctity of the mail would extend to protect those persons against arrest, because a temporary stoppage of the mail would be the consequence? We think not. It could not be said in any of those cases, that the act amounted to a wilful stoppage of the mail.

*The Jury returned a verdict Not Guilty.*



## THE TRIAL OF JAMES GALLAHER AND JAMES McELROY FOR PASSING COUNTERFEIT MONEY, NEW YORK CITY, 1820

### THE NARRATIVE.

A respectable citizen of Philadelphia named McElroy took a horse of his to New York City to sell, and the purchaser paid in part with a one hundred dollar bill on a New Orleans bank. Before he accepted the bill he showed it to several of his friends, who pronounced it good. Next day he exchanged it with a New York broker, Moses Allen, for a draft for \$90 on Allen's brother in Philadelphia, but shortly after Allen became convinced that the bill was counterfeit and stopped payment of his draft. McElroy sued him, but the defense that the bill was bad was successful, and McElroy lost his case. Allen returned him the \$100 bill and McElroy showed it to several persons, some of whom told him they thought it was good, and others that it was bad. Sometime afterwards McElroy met James Gallaher in a grocery store, related to him the history of his misfortunes and of the suit against Allen, and that he tried to sell the \$100 bill for fifteen dollars without success, and finally they agreed that Gallaher should dispose of the bill, and that if he was successful, part of the proceeds should be spent between them. Next morning Gallaher went into a clothing store in New York, bought some clothes, tendered the \$100 bill and asked for the change. But the proprietor discovered it was a forgery and both McElroy and Gallaher were arrested and indicted for passing counterfeit money.

On the trial, the Judge told the jury that though a man has been deceived in receiving counterfeit money, he has no right to impose on others; for, if he afterwards has reasonable grounds for believing a bank bill to be counterfeit he becomes

criminal if he attempts to pass it; that here the result of the suit against Allen furnished both the prisoners with notice that the bill was counterfeit. But the jury, considering that Gallaher was a volunteer in the passing of the bill and that McElroy had been an innocent victim at the beginning, convicted the former and acquitted the latter.

### THE TRIAL.<sup>1</sup>

*In the Court of General Sessions, New York City, January, 1820.*

HON. CADWALLADER D. COLDEN,<sup>2</sup> Mayor.

*January 7.*

The prisoners, *James Gallaher* and *James McElroy*, were indicted for forging and uttering a counterfeit bill of \$100 on the Louisiana Bank on November 13, 1819.

The bank note on which the indictment was founded was in the English language and the French language. On the right it read: "No. 580. The President, Directors and Co. of the Louisiana Bank promise to pay to F. Duplesses or bearer on demand one hundred dollars." On the left it read: "Le President, Directeurs & Cie de la Banque de la Louisiane payeront a F. Duplesses ou au porteur sur demande, Cent Piastres. N. Orleans, 4 Mars 1815. Thos Urquhart, Presdt., Thos. Harman, Cashier."

*The prisoner pleaded not guilty.*

*Pierre C. Van Wyck,*<sup>3a</sup> district attorney, for the People.

*W. M. Price,*<sup>3</sup> *John Rodman,*<sup>4</sup> and *John B. Scott*<sup>5</sup> for the Prisoners.

<sup>1</sup> New York City Hall Recorder. See I Am. St. Tr. 61.

<sup>2</sup> See 1 Am. St. Tr. 6.

<sup>3a</sup> See 4 Am. St. Tr. 547.

<sup>3</sup> See 5 Am. St. Tr. 360.

<sup>4</sup> RODMAN, JOHN. District attorney New York City, 1815-1816. In the city directories (1814) he is found "counsellor, 53 Pine street," and 1819-1822, "counsellor, 73 Nassau street."

<sup>5</sup> SCOTT, JOHN B. Attorney, 1810-1820. See New York City Directories: Justice Marine Court, 1825-1835.

### THE EVIDENCE.

In August last *McElroy*, an aged man of respectable appearance and good character, residing in Philadelphia, where he kept a livery stable, brought to this city a valuable horse to sell and sold it to a stranger for \$140, receiving the bill in question as part payment. He made inquiry before he delivered the horse as to the genuineness of the bill, inquiring of *William Heron* at the stable where he kept the horse. The two called on a number of persons said to be good judges, among them *Phineas Lounsberry*, who pronounced the bill good. They also went to several brokers in Wall street, who passed the same judgment.

Afterwards *McElroy* went into Wall street to get the bill discounted, but considering the rate charged to be too high, he carried the bill to the lottery office of *Moses Allen* in Broadway, who, being particularly in want of New Orleans bills, offered to discount this at 10 per cent. *McElroy* accepted the offer, but wished *Allen* to pay him in Philadelphia bills; but not having them, he offered him a draft for \$90 on the house of his partner in that city, which was accepted. A short time after he left the office a man, meanly attired, brought to *Allen* for discount another bill of the same denomination and impression and on the same bank. This bill *Allen* immediately discovered to be counterfeit; and, on examining the bill given him by *McElroy*, found it also bad. *Allen* wrote immediately to his partner in Philadelphia, enclosing the bill and

directing him when the draft should be presented to pay it with the bill enclosed.

Two or three weeks after, *McElroy* came to *Allen* with the draft and asked him if he would pay the amount in money. *Allen* told him that the bill was a counterfeit and refused payment.

*McElroy* then brought suit against *Allen* in the Marine Court to recover the money. *Allen* defended the suit on the ground that the bill for which the draft was given was a counterfeit. To establish this allegation he produced on the trial *Peter* and *Samuel Maverick*, brothers, the engravers of the plate from which the genuine bills on that bank were formerly struck, who concurred in stating that the bill in question was not struck from the plate engraved by them.

*Samuel Packwood* testified that he was well acquainted with the bills of the Louisiana Bank, and with the signatures both of the president and cashier. The latter, who had been cashier of that bank four or five years, was formerly the president of the Planters' Bank in New Orleans, of which the witness was a director. He had often seen him write and believed the signatures on the bill both of the president and cashier to have been forged.

Judgment was rendered in *Allen's* favor.

*Peter Maverick*, cross-examined, said that he and his brother made the plate for the Louisiana Bank 12 or 14 years ago, since which time another plate had been made by some other en-

graver from which bills recently issued are struck.

All the witnesses on behalf of the prosecution on the point of the forgery testified that the bill was a very exact imitation of the true bills.

After the trial of the suit against Allen, McElroy called on Allen for the bill, saying that he wished to return it to the man from whom it came if he could be found. Allen wrote a note to the attorney, in whose hands the bill was lodged, who delivered it to the prisoner.

McElroy afterwards sent the bill by *Sloan Chrystie* to several places to ascertain whether it was good, and went himself to the store of *Edmund P. Brady* and asked *John Redon*, a clerk, what the discount on the bill would be, requesting him to discount it, as he was going to sea and would trade out 14 or 15 dollars. *Redon* told him that he could not discount it, and McElroy left it with him to have it examined. *Redon*, on the return of *Brady*, gave him the bill, who satisfactorily ascertained that it was bad, and it was returned, with that information, by *Redon* to McElroy.

At the grocery store of *Barnard Kyle*, about 15th December, McElroy had a conversation with

*Gallaher*, wherein McElroy related the history of his misfortunes in relation to the bill, spoke of the result of the suit and of his attempt to pass the bill to *Brady*; and it was finally agreed between them, in consequence of the voluntary offer of *Gallaher*, that he should endeavor to pass the bill and, if he succeeded, that \$5, a part of the money, should be spent between them.

*Gallaher*, next morning, went with the bill to the clothing store of *Robert Banks* and told *Dennis Keenan*, the foreman, that he wished to purchase a suit of clothes, and he selected a pair of pantaloons, a pea coat and a coat amounting to \$17, and offered the counterfeit bill. *Keenan* examined the bill, which *Gallaher* said was good, and in confirmation of that assertion, produced a letter and said that he had recently received an inclosure of \$100 from his brother in New Orleans. Whereupon *Keenan* delivered the bill to *Banks*, telling him to take out \$17 but examine the bill. *Banks* sent it to the store of *Brady*, directly opposite, and he immediately recognized the bill and detained it. *Gallaher* earnestly solicited *Brady* to deliver him the bill, but he refused and in a short time had the prisoners apprehended and left the bill with the police.

The Counsel for the People and the Prisoners having addressed the jury:

The MAYOR (to the Jury). As to *Gallaher*, in the opinion of the court, the guilt or innocence of the prisoner did not depend on the question whether McElroy received the bill for a good consideration and was deceived; for if from the facts, which occurred subsequent to such reception of the bill, the

jury should believe the prisoner had reasonable grounds for believing the bill counterfeit, though he may not have had a certain and absolute conviction on the subject, he was amenable to the punishment prescribed by the statute. A man, though he has been imposed on by counterfeit money, has no right to impose on others; and if McElroy himself would not be excusable, much less is the prisoner. With a full knowledge of the facts in relation to the bill he volunteered to pass it in consideration of \$5, to be spent between himself and McElroy.

As to McElroy, should the jury believe from the evidence that this bill was a forgery, and of this there was no reason to doubt, the next and the principal question for their consideration would be whether the prisoner passed it with an intent to defraud. And on this point it is not necessary that the jury should believe that he actually did defraud. If the testimony is to be believed, he passed the bill in two several instances—first, to Redon and, second, to Gallaher. But it is well worthy the consideration of the jury whether, when the prisoner passed the bill to Redon, it was with an intent to defraud. When the prisoner brought the bill to the store he wanted to know if it could be discounted and left it for examination. True it is, he said that he was going to sea; but this declaration, though improbable, is not contradicted. If the verdict depended on this branch of the case, in the view of the Court, the prisoner ought not to be convicted. Did he pass the bill to Gallaher knowing it to be counterfeit and with an intent to defraud?—for this latter branch of the inquiry is involved within the other. On the point of knowledge, perfect certainty is not requisite; it is sufficient if the prisoner had reasonable grounds for believing the bill bad. This doctrine had been recently established by the late chief justice in a case tried in the Oyer and Terminer in Ontario County, and was well-settled law. In cases of this description, false and inconsistent statements made by the prisoner are generally relied on by the public prosecutor; but in this case the testimony does not afford them, and the good char-

acter of the prisoner will have that weight it deserves with the jury. Should they believe from the facts and circumstances in the case that the prisoner passed this bill to Gallaher knowing it to be bad, it will be their duty to convict, otherwise to acquit, the prisoner.

#### THE VERICT AND SENTENCE.

The *Jury* returned a verdict of *guilty* as to Gallaher and *not guilty* as to McElroy.

The COURT sentenced Gallaher to imprisonment in the State penitentiary for the term of five years.

## **THE TRIAL OF ROBERT WORRALL FOR ATTEMPTING TO BRIBE A PUBLIC OFFICER, PHILADELPHIA, PENNSYLVANIA, 1798.**

### **THE NARRATIVE.**

Congress, by statute, had authorized the Secretary of the Treasury to build two lighthouses on the coast of North Carolina. The Secretary authorized Tench Coxe, Esq., a commissioner of the revenue, to advertise for bids to do the work, which he did, and among the bids received was one from Robert Worrall. He received more than that, for a little later came a letter to him from Worrall in which he said that as he would make a good profit out of the contract if he obtained it, he would in that event go shares with the Commissioner and turn over to him the nice little sum of eighteen hundred and sixty odd dollars and some cents. Mr. Coxe promptly consulted the Attorney General, and even informed the President of the matter, and invited Mr. Worrall to call at his office and talk it over. He came, and in that and a second interview he repeated what he had stated in his letter. Mr. Coxe now handed him over to the authorities and he was indicted for bribery.

He did not deny the facts, his counsel called no witnesses, and the jury promptly returned a verdict of guilty. Then his lawyers moved the court to arrest the judgment on the ground that there was no Federal statute punishing the attempt to bribe a Federal officer; that in a State court, if there was no statute, the prisoner could be punished under the common law, but there was no common law and hence no common-law crimes in the United States.

Judge Chase agreed with this, but the other judge (Peters) thought the Federal government had such power; it was a power, he said, necessary to preserve itself. So the verdict

stood and the prisoner was sentenced to fine and imprisonment.

### THE TRIAL.<sup>1</sup>

*In the United States Circuit Court, District of Pennsylvania, Philadelphia, May, 1798.*

HON. SAMUEL CHASE,<sup>2</sup>  
HON. RICHARD PETERS,<sup>3</sup> } *Judges.*

*May 9.*

The *prisoner* was indicted for attempting to bribe one Tench Coxe, a commissioner of the revenue. The first count alleged that Congress, in May, 1794, had enacted that as soon as North Carolina had ceded to the United States a portion of Cape Hatteras, the Secretary of the Treasury should contract for the building of a lighthouse thereon; that the Secretary of the Treasury should also contract for building a lighted beacon on an island called Shell Castle in the harbor of Ocracock as soon as the land should be ceded to the United States by North Carolina: that the state had ceded the land; that on September 28, 1797, Tench Coxe, Esq., a commissioner of the revenue, in the department of the Secretary of the Treasury, was instructed by the Secretary of the Treasury to receive proposals for building the lighthouse and beacon aforesaid; that Robert Worrall, being an ill-disposed person and wickedly contriving and contending to bribe and seduce the said Tench Coxe, commissioner of the revenue, from the performance of the trust and duty so in him reposed, on the said 28th day of September, 1797, wickedly, advisedly and corruptly did write and cause to be delivered to the said Tench Coxe the following letter:

"Dear Sir: Having had the honor of waiting on you, at different times on the lighthouse business, and having delivered a fair, honest estimate, and, I will be candid to declare, that with my diligent and

<sup>1</sup> Wharton's State Trials. See 4 Am. St. Tr. 616. Dallas' Pennsylvania Reports, vol. 2.

<sup>2</sup> See 10 Am. St. Tr. 778.

<sup>3</sup> See 4 Am. St. Tr. 616.



industrious attendance and sometimes taking an active part in the work and receiving a reasonable wage for attending the same, I will be bold to say that when the work is completed in the most masterly manner the job will clear at the finishing the sum of £1,000. Now, if your goodness will consider that the same set of men that will be wanted for a small part of one job will be necessary for the other, and particularly the carpenters, and smith for the iron work, and as they will want a blacksmith's shop and a set of tools at Cape Hatteras, the other iron work might be made there and sent across the sound at a small expense, which would make a considerable saving.

"I have had this morning a set of good carpenters, four in number, as ever emigrated from the old country, as also several stone masons, offering themselves to go to Carolina. As I told you about the smith that I had engaged, he informed me that he had a set of good second-hand tools offered him that might be purchased at a reasonable price. Therefore, good sir, as having always been brought up in a life of industry, should be happy in serving you in the executing this job, and always content with a reasonable profit; therefore every reasonable person would say that £1400 was not unreasonable, in the two jobs. If I should be so happy in your recommendation of this work, I should think myself very ungrateful if I did not offer you one-half of the profits as above stated and would deposit in your hand at receiving the first payment £350, and the other £350 at the last payment, when the work is finished and completed. I hope you will not think me troublesome in asking for a line on the business by your next return, and will call for it at the Post Office, or in Third Street. In the meantime I shall subscribe myself to be, your obedient and very humble servant to command.

"Robert Worrall.

"Philadelphia, Sept. 28, 1797."

The second count alleged that Robert Worrall did solicit and endeavor to procure Tench Coxe, Esq., being commissioner of the revenue of the said United States, authorized to receive proposals for contracting to build a lighthouse on Cape Hatteras and a beacon on Shell Castle Island, to contract with and give a preference to him, the said Robert Worrall, for the building of the lighthouse and beacon, and in order to prevail upon him to agree to give him the preference in and the benefit of such contract, he offered to give said Tench Coxe the sum of £700, money of Pennsylvania, equal in value to \$1866.67.

The prisoner pleaded *not guilty*.

Mr. Rawle,<sup>4</sup> District Attorney, for the Government.

Mr. Dallas<sup>5</sup> and Mr. Levy,<sup>6</sup> for the Prisoner.

<sup>4</sup> See 4 Am. St. Tr. 624.

<sup>5</sup> See 7 Am. St. Tr. 679.

<sup>6</sup> See 4 Am. St. Tr. 639.

## THE EVIDENCE.

*Mr. Cox.* In consequence of instructions from the Secretary of the Treasury I officially invited proposals for erecting the lighthouses, etc., mentioned in the indictment. Prisoner presented proposals; while they were under consideration he sent the offensive letter at Philadelphia, but I had removed my office, in consequence of the yellow fever, to Burlington, N. J., so it was received at the latter place on 28th September, with other dispatches from the post office of Bristol, in Pennsylvania. I immediately consulted Mr. Ingersoll, the attorney general of the State, communicated the circumstances that had occurred to the President, and invited prisoner to a conference at Burlington. He came, acknowledged having written and sent the letter; declared that no one else knew its contents, for "in business done in his chamber he did not let his left hand know what his right hand did"; and

repeated the offer of allowing me a share in the profits of the contract. He pressed for an answer, but I referred him to the period when the public offices should be again opened in Philadelphia. Soon after the revival of business in the city he called at my office; the whole subject was gone over and perfectly recognized, the offer to give the money mentioned in the letter was repeated, and in the fullest manner he gave me to understand that he would allow £700 as a consideration for procuring him the contract. I am not positive that the letter was produced to defendant at this interview.

The acts of Congress, the cession of the land to the United States by the North Carolina Legislature, the instruction of the Secretary of the Treasury were all proved.

The *prisoner's counsel* called no witnesses.

*Mr. Levy.* It is not sufficient for the purpose of conviction to prove that the defendant was guilty of an offense, but the offense must also appear to be legally defined, and it must have been committed within the jurisdiction of the court which undertakes to try and punish it. The eighth article of the amendments to the Federal Constitution (3 Vol. Swift's Edit., p. 456) provides, indeed, expressly that "in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State or District wherein the crime shall have been committed," etc. Now, in the present instance there is no proof that the criminal letter was written in Pennsylvania, and the proof of publication and delivery is at Burlington, in New Jersey. The first count of the indictment, therefore, must necessarily fail, and unless he is convicted upon that, he can not be convicted on the second count, which is attempted to be supported merely by evidence of recognizing in Philadelphia a corrupt offer previously made in another place, out of the jurisdiction of the court.

*Mr. Rawle.* According to the decision in Dr. Henzey's case (Burr.

642), the letter being dated at Philadelphia is in itself sufficient proof that it was written there. But the letter was put into the Bristol post office by defendant; and, consequently, by his act, done in Pennsylvania, it was caused to be delivered to Mr. Coxe at Burlington. The opposite doctrine, indeed, would furnish absolute impunity to every offender of this kind whose crime was not commenced and consummated in the same district; for the defendant, it is said, can not be punished in Pennsylvania because the letter was delivered to Mr. Coxe in New Jersey, and, by a parity of reasoning, he could not be punished in New Jersey because it was neither written nor delivered by him within the jurisdiction of that State. To show that the offer of a bribe is indictable, though the bribe is not accepted, I refer to 4 Burr. 2494; 1 Ld. Raym. 1377.

The Court. The letter appears by its date to have been written in Pennsylvania, and it is actually delivered by the defendant at a post office in Pennsylvania. The writing and the delivery at the post office, thus putting it in the way to be delivered to Mr. Coxe, must be considered, in effect, as one act; and, as far as respects the defendant, it is consummated within the jurisdiction of the court. We therefore think that the first count in the indictment is sufficiently supported. But on the second count there can be no possible doubt, if the testimony is credited. The defendant, in the city of Philadelphia, unequivocally repeats in words the corrupt offer which he had previously made to Mr. Coxe in writing.

There were no speeches to the jury, the counsel for the prisoner relying on the questions of jurisdiction, which they would argue after verdict.

The *Jury* returned a verdict of *Guilty* on both counts.

*Mr. Dallas.* We now move in arrest of judgment, because the Circuit Court could not take cognizance of the crime charged in the indictment. Independent of the general question of jurisdiction, the indictment was exceptionable, inasmuch as it recited the act of Congress, making it the duty of the Secretary of the Treasury to form the contracts contemplated, but did not state the authority for devolving that duty on the Commissioner of the Revenue; and, consequently, it could not be inferred that the corrupt offer was made to seduce the Commissioner from the faithful execution of an official public trust, which was the gist of the prosecution. But the force of the objection to the jurisdiction superseded the necessity of attending to matters of technical form and precision in presenting the accusation. It will be admitted that all the judicial authority of the Federal courts must be derived either from the Constitution of the United States or from the acts of Congress made in pursuance of that Constitution. It is therefore incumbent upon the prosecutor to show that an offer to bribe the commissioner of the Revenue is a violation of some constitution or legislative prohibition. The Constitution contains express

provisions in certain cases which are designated by a definition of the crimes, by a reference to the characters of the parties offending, or by the exclusive jurisdiction of the place where the offenses were perpetrated; but the crime of attempting to bribe, the character of a Federal officer, and the place where the present offense was committed do not form any part of the constitutional express provisions for the exercise of judicial authority in the courts of the Union. The judicial power, however, extends not only to all cases in law and equity arising under the Constitution, but likewise to all such as shall arise under the laws of the United States (Art. 3, sec. 2), and besides the authority specially vested in Congress to pass laws for enumerated purposes, there is a general authority given "to make all laws which shall be necessary and proper for carrying into execution all the powers vested by the Constitution in the government of the United States or in any department or office thereof." (Art. 1, sec. 8.) Whenever, then, Congress, think any provision necessary to effectuate the constitutional power of the government, they may establish it by law; and whenever it is so established, a violation of its sanctions will come within the jurisdiction of this court, under the 11th section of the Judicial Act, which declares that the circuit court "shall have exclusive cognizance of all crimes and offenses cognizable under the authority of the United States," etc. (1 vol. Swift's Edit. p. 55.) Thus Congress have provided by law for the punishment of treason, misprision of treason, piracy, counterfeiting any public certificate, stealing or falsifying records, etc., for the punishment of various crimes when committed within the limits of the exclusive jurisdiction of the United States, and for the punishment of bribery itself in the case of a judge, officer of the customs, or an officer of the excise. (1 vol. Swift's Edit., p. 100; *Ibid.* p. 236, sec. 66; *Ibid.* p. 327, sec. 47.) But in the case of the Commissioner of the Revenue the act constituting the office does not create or declare the offense; 2 vol., p. 112, sec. 6, it is not recognized in the act, under which proposals for building the lighthouse were invited; 3 vol., p. 63, and there is no other act that has the slightest relation to the subject.

Can the offense, then, be said to arise under the Constitution or the laws of the United States? And, if not, what is there to render it cognizable under the authority of the United States? A case arising under a law must mean a case depending on the exposition of a law in respect to something which the law prohibits or enjoins. There is no characteristic of that kind in the present instance. But, it may be suggested that the office being established by a law of the United States, it is an incident naturally attached to the authority of the United States to guard the officer against the approaches of corruption in the execution of his public trust. It is true that the person who accepts an office may be supposed to enter into a compact to be answerable to the government which he serves for any violation of his duty, and, having taken the oath of office, he would unquestionably be liable, in such case, to a prosecution for perjury

in the Federal courts. But because one man, by his own act, renders himself amenable to a particular jurisdiction, shall another man, who has not incurred a similar obligation, be implicated? If, in other words, it is sufficient to vest a jurisdiction in this court that a Federal officer is concerned; if it is a sufficient proof of a case arising under a law of the United States to affect other persons, that such officer is bound by law to discharge his duty with fidelity, a source of jurisdiction is opened which must inevitably overflow and destroy all barriers between the judicial authorities of the State and the general government. Anything which can prevent a Federal officer from the punctual, as well as from an impartial, performance of his duty—an assault and battery or the recovery of a debt, as well as the offer of a bribe—may be made a foundation of the jurisdiction of this court; and, considering the constant disposition of power to extend the sphere of its influence, fictions will be resorted to when real cases cease to occur. A mere fiction that the defendant is in the custody of the marshal has rendered the jurisdiction of the King's Bench universal in all personal actions. Another fiction, which states the plaintiff to be a debtor of the crown, gives cognizance of all kinds of personal suits to the Exchequer; and the mere profession of an attorney attaches the privilege of suing and being sued in his own court. If, therefore, the disposition to amplify the jurisdiction of the Circuit Court exists, precedents of the means to do so are not wanting; and it may hereafter be sufficient to suggest that the party is a Federal officer in order to enable this court to try every species of crime and to sustain every description of action.

But another ground may, perhaps, be taken to vindicate the present claim of jurisdiction. It may be urged that, though the offense is not specified in the Constitution, nor defined in any act of Congress, yet that it is an offense at common law, and that the common law is the law of the United States in cases that arise under their authority. The nature of our Federal compact will not, however, tolerate this doctrine. The twelfth article of the amendment stipulates that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people." In relation to crimes and punishments, the objects of the delegated power of the United States are enumerated and fixed. Congress may provide for the punishment of counterfeiting the securities and current coin of the United States, and may define and punish piracies and felonies committed on the high seas, and offenses against the law of nations. (Art. 1, sec. 8.) And so, likewise, Congress may make all laws which shall be necessary and proper for carrying into execution the powers of the general government. But here is no reference to a common-law authority. Every power is matter of definite and positive grant, and the very powers that are granted cannot take effect until they are exercised through the medium of a law. Congress had undoubtedly a power to make a law which should render it criminal to offer a bribe to the Commissioner of the Revenue;

but, not having made the law, the crime is not recognized by the Federal code, constitutional or legislative, and, consequently, it is not a subject on which the judicial authority of the Union can operate.

The cases that have occurred since the establishment of the Federal Constitution confirm these general principles. The indictment against Henfield, an American citizen, for enlisting and serving on board a French privateer while she captured a Dutch merchant ship, etc., expressly charged the defendant with a violation of the treaties existing between the United States and the United Netherlands, Great Britain, etc., which is a matter cognizable under the Federal authority by the Constitution. (See 4 Am. St. Tr. 615). The jurisdiction in the indictment against Ravara was sustained by reason of the defendant's official character as consul. And in a recent prosecution by the State of Pennsylvania against Sheaffer, in the Mayor's Court of Philadelphia, a motion in arrest of judgment was overruled by the recorder (Mr. Wilcocks), though the offense consisted in forging claims to land warrants issuable under the resolutions of Congress, and although the cognizance of crimes and offenses cognizable under the authority of the United States is exclusively vested in the district and circuit courts.

*Mr. Rawls.* The exception taken in support of the motion in arrest of judgment struck at the root of the whole system of the national government; for, if opposition to the pure, regular, and efficient administration of its affairs could thus be made by fraud, the experiment of force might next be applied, and doubtless with equal impunity and success. It is unnecessary to reason from the inconveniency and mischief of the exception, for the offense was strictly within the very terms of the Constitution, arising under the laws of the United States. If no such office had been created by the laws of the United States, no attempt to corrupt such an officer could have been made; and it is unreasonable to insist that merely because a law has not prescribed an express and appropriate punishment for the offense, therefore the offense, when committed, shall not be punished by the circuit court upon the principles of common-law punishment. The effect, indeed, of the position is still more injurious; for, unless this offense is punishable in the Federal courts, it certainly is not cognizable before any State tribunal. The true point of view for considering the case may be ascertained by an inquiry whether, if Mr. Coxe had accepted the bribe and betrayed his trust, he would not have been indictable in the courts of the United States? If he would be so indictable, upon the strongest principles of analogy, the offense of the person who tempted him must be equally the subject of animadversion before the same judicial authority. The precedents cited by the defendant's counsel are distinguishable from the present indictment. The prosecution against Henfield was not expressly on the treaty, but on the law of nations, which is a part of the common law of the United States; and the power of indicting for a breach of treaty, not expressly

providing the means of enforcing performance in the particular instance, is itself a common-law power. Unless the judicial system of the United States justified a recourse to common law against an individual guilty of a breach of treaty, the offense, where no specific penalty was to be found in the treaty, would therefore remain unpunished. So, likewise, with respect to Ravara, although he held the office of a consul, he was indicted and punished at the common law. The offense charged in *Republica v. Shaffer* did not arise under the laws of the United States, but was simply the forgery of the names of private citizens in order to defraud them of their rights; and even as far as the forgery might be supposed to deceive the public officers, it was a deception in regard to a mere official arrangement for ascertaining transfers of donation claims, and not in regard to any act directed by law to be performed. But a further distinction presents itself. The donations to the soldiers were founded upon resolutions of the United States in Congress, passed long before the adoption of the present Constitution. The courts of the several States therefore held a jurisdiction of the offense, which, without positive words or necessary implication, was not to be divested. The case did not come within the expressions in the Constitution, "cases arising under the Constitution and laws of the United States," etc., nor has it been expressly provided for by any act under the present Constitution. The criminal jurisdiction of the circuit court, which, wherever it exists, must be exclusive of State jurisdiction, can not, perhaps, fairly be held to operate retrospectively by withdrawing from the State judicatures powers they held and duties they performed previously to the Constitution, from which the circuit court derived its birth.

JUDGE CHASE. Do you mean, Mr. Attorney, to support this indictment solely at common law? If you do, I have no difficulty upon the subject: The indictment can not be maintained in this court.

*Mr. Rawle* answered in the affirmative.

JUDGE CHASE. This is an indictment for an offense highly injurious to morals, and deserving the severest punishment; but, as it is an indictment at common law, I dismiss, at once, everything that has been said about the Constitution and laws of the United States.

In this country every man sustains a twofold political capacity—one in relation to the State and another in relation to the United States. In relation to the State he is subject to various municipal regulations, founded upon the State constitution and policy, which do not affect him in his relation to the United States, for the Constitution of the Union is the source of all the jurisdiction of the national government; so that the departments of the government can never assume any power that is not expressly granted by that instrument, nor exercise a power in any other manner than is there prescribed. Besides the particular cases, which the eighth section of

the first article designates, there is a power granted to Congress to create, define, and punish crimes and offenses whenever they shall deem it necessary and proper by law to do so for effectuating the objects of the government; and although bribery is not among the crimes and offenses specifically mentioned, it is certainly included in this general provision. The question, however, does not arise about the power, but about the exercise of the power: Whether the courts of the United States can punish a man for any act before it is declared by a law of the United States to be criminal? Now, it appears to my mind to be as essential that Congress should define the offenses to be tried and apportion the punishments to be inflicted as that they should erect courts to try the criminal or to pronounce a sentence on conviction.

It is attempted, however, to supply the silence of the Constitution and statutes of the Union by resorting to the common law for a definition and punishment of the offense which has been committed; but, in my opinion, the United States, as a Federal government, have no common law, and, consequently, no indictment can be maintained in their courts for offenses merely at the common law. If, indeed, the United States can be supposed, for a moment, to have a common law, it must, I presume, be that of England; and, yet, it is impossible to trace when or how the system was adopted or introduced. With respect to the individual States the difficulty does not occur. When the American colonies were first settled by our ancestors it was held, as well by the settlers as by the judges and lawyers of England, that they brought hither as a birth-right and inheritance so much of the common law as was applicable to their local situation and change of circumstances. But each colony judged for itself what parts of the common law were applicable to its new condition, and in various modes—by legislative acts, by judicial decisions, or by constant usage—adopted some parts and rejected others. Hence, he who shall travel through the different States will soon discover that the whole of the common law of England has been nowhere introduced; that some States have rejected what others have adopted; and that there is, in short, a great and essential diversity in the subjects to which the common law is applied, as well as in the extent of its application. The common law, therefore, of one State is not the common law of another; but the common law of England is the law of each State, so far as each State has adopted it; and it results from that position, connected with the judicial act, that the common law will always apply to suits between citizen and citizen, whether they are instituted in a Federal court or State court.

But the question recurs, When and how have the courts of the United States acquired a common-law jurisdiction in criminal cases? The United States must possess the common law themselves before they can communicate it to their judicial agents. Now, the United States did not bring it with them from England; the Constitution does not create it; and no act of Congress has assumed it. Besides, what is the common law to which we are referred? Is it the com-



mon law entire, as it exists in England, or modified, as it exists in some of the States; and of the various modifications, which are we to select, the system of Georgia or New Hampshire, of Pennsylvania or Connecticut?

Upon the whole it may be a defect in our political institutions, it may be an inconvenience in the administration of justice, that the common-law authority relating to crime and punishments has not been conferred upon the government of the United States, which is a government in other respects also of a limited jurisdiction. But judges can not remedy political imperfections, nor supply any legislative omission. I will not say whether the offense is at this time cognizable in a State court. But, certainly, Congress might have provided by law for the present case, as they have provided for other cases of a similar nature; and yet if Congress had ever declared and defined the offense, without prescribing a punishment, I should still have thought it improper to exercise a discretion upon that part of the subject.

JUDGE PETERS. Whenever a government has been established, I have always supposed that a power to preserve itself was a necessary and an inseparable concomitant. But the existence of the Federal government would be precarious, and it could no longer be called an independent government, if for the punishment of offenses of this nature, tending to obstruct and pervert the administration of its affairs, an appeal must be made to the State tribunals or the offenders must escape with absolute impunity.

The power to punish misdemeanors is originally and strictly a common-law power, of which, I think, the United States are constitutionally possessed. It might have been exercised by Congress in the form of a legislative act; but it may also, in my opinion, be enforced in a course of judicial proceeding. Whenever an offense aims at the subversion of any Federal institution, or at the corruption of its public officers, it is an offense against the well-being of the United States; from its very nature it is cognizable under their authority, and, consequently, it is within the jurisdiction of this court, by virtue of the eleventh section of the judicial act.

The COURT being divided in opinion, it became a doubt whether sentence could be pronounced upon the defendant, and a wish was expressed by the judges and Mr. Rawle that the case might be put into such a form as would admit of obtaining the ultimate decision of the Supreme Court upon the important principle of the discussion: But the counsel for the prisoner did not think themselves authorized to enter into a compromise of that nature.

The COURT, after a short consultation, and declaring that

the sentence was mitigated in consideration of the defendant's circumstances, proceeded to adjudge, that the defendant be imprisoned for three months; that he pay a fine of two hundred dollars; and that he stand committed until this sentence be complied with and the costs of prosecution paid.

THE TRIAL OF ISAAC WILLIAMS FOR ACCEPT-  
ING A COMMISSION ON AN ARMED VESSEL  
IN TIME OF WAR. HARTFORD,  
CONNECTICUT, 1799.

THE NARRATIVE.

In 1797, while England and France were at war, a Connecticut sailor enlisted in the French navy and became a lieutenant on a French warship. When he came back to the United States he was indicted for a breach of the Federal Neutrality laws. He pleaded that before he accepted the naval commission he had become a French citizen according to the laws of France. But the Chief Justice of the Supreme Court of the United States held that this was no defense, for he said no citizen has a right to expatriate himself without the consent of the country whose allegiance he seeks to renounce.

THE TRIAL.<sup>1</sup>

*In the United States Circuit Court, Hartford, Connecticut,  
April, 1799.*

HON. OLIVER ELLSWORTH,<sup>2</sup> *Chief Justice.*

HON. RICHARD LAW,<sup>3</sup> *District Judge.*

<sup>1</sup> Wharton's State Trials. See 4 Am. St. Tr. 616.

<sup>2</sup> ELLSWORTH, OLIVER. (1745-1807.) Born Windsor, Conn.; entered Yale 1762, but changed to Princeton, where he graduated in 1766; studied theology a year and then law; admitted to bar 1771 (Hartford); State's attorney 1775; member of legislature, then member of Congress, 1778-83; member of governor's council, 1780-84; judge Superior Court (Conn.), 1784-97; member of Federal and State constitutional conventions, 1787; United States Senator, 1789; Chief Justice United States Supreme Court, 1796-1800; chief justice Supreme Court of Connecticut, 1807; LL.D. Yale, Dartmouth, and Princeton. "Ellsworth possessed in a felicitous combination those attributes which make up a great judge and which afterwards, through a much longer career, were displayed by his eminent successor. His mind, naturally exact and comprehensive, had been disciplined by severe study and by the exercise of an extended practice. He went into public life just at that period when the

April 20.

*Isaac Williams* of Norwich, Connecticut, was indicted for having, as a citizen of the United States, on February 20, 1797, at Guadaloupe, in the West Indies, accepted from the Republic of France, then at war with the Kingdom of Great Britain, a commission to commit acts of hostility against said king and her subjects contrary to the 21st Article of the Treaty of Amity, Commerce and Navigation existing between Great Britain and the United States.

*Pierpont Edwards*<sup>4</sup> for the United States.

*David Daggett*<sup>5</sup> for the Prisoner.

### THE EVIDENCE.

It was admitted by the prisoner French consul general a warrant that he had committed the acts appointing him 3d lieutenant of charged. He offered to prove the French warship *Jupiter*; that that in 1792 he received from the he sailed on it to France, arriv-

intellect, not yet so settled in the professional mould as to lose its natural malleability, is able to adapt itself to its new and more liberal pursuits with the pernacity and precision but without the stiffness attendant on long service at the bar. His talents as an advocate were unrivaled."—Wharton's State Trials.

<sup>3</sup> *LAW, RICHARD.* (1733-1806.) Born Milford, Conn., son of Jonathan Law, chief justice and governor of Connecticut. Graduated Yale 1751; studied law with Jared Ingersoll and admitted to bar in 1754; judge county court; member general assembly and council, 1776-86; member of Congress, 1777-84; judge Supreme Court of Connecticut, 1784; chief justice, 1786; mayor of New London, 1784; United States district judge, 1789-1806; LL.D. Yale, 1802. Died in New London.

<sup>4</sup> *EDWARDS, PIERRPONT.* (1750-1826.) Born Northampton, Mass., son of Jonathan Edwards; graduated Princeton, 1768; began practice of law in New Haven, Conn.; member of State Legislature for many years; administrator of estate of Benedict Arnold; served in Revolutionary army; member of Congress, 1787-1788; member of Connecticut convention to ratify the Constitution; founder of the Toleration Party in Connecticut; United States district judge, 1806. Died in Bridgeport, Conn.

<sup>5</sup> *DAGGETT, DAVID.* (1764-1851.) Born Attleborough, Mass.; mayor and State's attorney of New Haven, Conn.; member Connecticut Legislature and Council; Presidential elector; United States Senator, 1826-1832; judge Supreme Court of Connecticut; chief justice, 1832-1834. Died in New Haven.

ing at Rochefort in the autumn of that year; that at Rochefort he was naturalized the same autumn, renouncing his allegiance to all other countries, particularly to America, and taking an oath of allegiance to the Republic of France, according to the laws of said Republic; that immediately after said naturalization he was duly commissioned by the Republic of France appointing him a second lieutenant on board a French frigate called the *Charont*; that before the ratification of the treaty of amity and commerce between the United States and Great Britain he was duly commissioned by the French Republic a second lieutenant on board a 74-gun ship, in the service of said Republic; and that he

has continued under the government of the French Republic down to the present time, and the most of said time actually resident in the dominions of the French Republic; that during said period he was not resident in the United States more than six months, which was in the year 1796, when he came to this country for the purpose merely of visiting his relations and friends; that for about three years past he has been domiciliated in the island of Guadaloupe, within the dominions of the French Republic, and has made that place his fixed habitation, without any design of again returning to the United States for permanent residence.

*Mr. Edwards* conceded the above mentioned statement to be true; but objected that it ought not to be admitted as evidence to the jury, because it could have no operation in law to justify the prisoner in committing the facts alleged against him in the indictment.

JUDGE LAW expressed doubts as to the legal operation of the evidence; and gave it as his opinion, that the evidence, and the operation of law thereon, be left to the consideration of the jury.

ELLSWORTH, CHIEF JUSTICE. The common law of this country remains the same as it was before the Revolution. The present question is to be decided by two great principles; one is that all the members of civil community are bound to each other by compact. The other is, that one of the parties to this compact cannot dissolve it by his own act. The compact between our community and its members is, that the community will protect its members; and on the part of the members, that they will at all times be obedient to the laws of the community, and faithful in its defense. This compact distinguishes our government from those which are founded in violence or fraud.

It necessarily results, that the members cannot dissolve this compact, without the consent or default of the community. There has been here no consent—no default. Default is not pretended. Express consent is not claimed; but it has been argued, that the consent of the community is implied by its policy—its conditions, and its acts.

In countries so crowded with inhabitants that the means of subsistence are difficult to be obtained, it is reason and policy to permit emigration. But our policy is different; for our country is but sparsely settled, and we have no inhabitants to spare.

Consent has been argued from the condition of the country; because we were in a state of peace. But though we were in peace the war had commenced in Europe. We wished to have nothing to do with the war; but the war would have something to do with us. It has been extremely difficult for us to keep out of this war; the progress of it has threatened to involve us. It has been necessary for our government to be vigilant in restraining our own citizens from those acts which would involve us in hostilities. The most visionary writers on this subject do not contend for the principle in the unlimited extent, that a citizen may at any and at all times, renounce his own, and join himself to a foreign country. Consent has often been argued from the acts of our own government, permitting the naturalization of foreigners. When a foreigner presents himself here, and proves himself to be of a good moral character, well affected to the Constitution and government of the United States, and a friend to the good order and happiness of civil society; if he has resided here the time prescribed by law, we grant him the privilege of a citizen. We do not inquire what his relation is to his own country; we have not the means of knowing, and the inquiry would be indelicate; we leave him to judge of that. If he embarrasses himself by contracting contradictory obligations, the fault and the folly are his own. But this implies no consent of the government, that our own citizens should expatriate themselves. Therefore, it is my opinion that these facts which the prisoner offers to

prove in his defense, are totally irrelevant; they can have no operation in law; and the jury ought not to be embarrassed or troubled with them; but by the constitution of the court the evidence must go to the jury.

### THE VERDICT.

The *Jury* soon agreed on a verdict, and found the prisoner *guilty*. The COURT sentenced him to pay a fine of one thousand dollars, and to suffer four months imprisonment.

The prisoner was also indicted for having on the 23d of September, 1797, in a hostile manner, with a privateer commissioned by the French Republic, attacked and captured a British ship and crew on the high seas, contrary to the twenty-first article of the treaty between the United States and Great Britain, said Williams being then a citizen of the United States, the French Republic being then at war with the King of Great Britain, and said King being in amity with the United States. Williams' defense on the first indictment being of no avail, and having no other defense to this, he pleaded guilty. The court sentenced him to pay a fine of \$1,000 and to suffer a further imprisonment of four months.

## THE TRIAL OF DANIEL K. ALLEN FOR FALSE PRETENSES, NEW YORK CITY, 1818.

### THE NARRATIVE.

Daniel Allen, a business man, whose firm kept their money with the Bank of New York, was in the habit of making the deposits himself and drawing cash on the firm checks at the same time. Very often after he had deposited money with the receiving teller he would walk over to the paying teller, his bank book in his hand, which he exhibited to show that his account was good. Sometimes, the teller on receiving the check, would remark to him: "I suppose you have deposited sufficient to answer this check," to which Allen would answer in the affirmative and exhibit his book as evidence of the fact.

One day in April, Allen went as usual to the desk of the receiving teller and deposited \$1209, and from thence, his book in his hand, passed to the paying teller and presented his own check for \$5450. The money was paid and no question at that time was asked of him. Later the bank found that the checks of Allen presented and paid on the same day exclusive of the \$5450 amounted to \$6500 and that he had overdrawn his account to the amount of \$10,722.93 on that day. He was indicted for obtaining this money by false pretenses.

On the trial, the paying teller testified that on this particular day he had not questioned Allen as to how much he had deposited nor had Allen said anything, but had simply held his bank book in his hand as usual. Allen admitted that he knew when he presented the check that he was overdrawing his account, but expected to make the amount good the next day, but people who owed him money disappointed him. Two of his clerks said they had often presented checks of the firm to the teller who had paid them without looking at the state



of the account and three customers of the firm testified to the same effect.

The jury, after having heard all the evidence, the speeches of the counsel and the charge of the Judge, returned a verdict of not guilty.

### THE TRIAL.<sup>1</sup>

*In the Court of General Sessions, New York City, July, 1818.*

HON. CADWALLADER D. COLDEN,<sup>2</sup> *Mayor.*

*July 10.*

David K. Allen during the last term was indicted for obtaining, by false pretenses, \$5,450, the bank notes of the "President, Directors, and Company of the Bank of New York." The indictment contained three counts: the first at common law, and the two others under the statute.

The first count charged that the defendant, on the 16th day of April, 1818, fraudulently and deceitfully did get into his hands and possession, of and from Cornelius Heyer, assistant cashier of the said bank, \$5,450, in the promissory notes of the said bank, commonly called bank notes, of the value, etc., by and under false colors and pretenses, held out and made to said Heyer, to wit: that he, the defendant, on, etc., at, etc., had deposited in the said bank a large sum of money, to wit, \$5,450, and that the said sum was then in deposit in the said bank to his credit and to the credit of his partner, R. Allen; and that the said sum had been entered by the receiving teller of said bank in the bank book of the said defendant and his partner as being deposited to their credit; and that he, the defendant, had at the desk of the receiving teller just deposited a large sum, to wit, \$5,450, and that an entry of the said sum was to be seen in said bank book which the defendant had and held in his hand and exhibited to said Heyer, and that the check of the said R. Allen and Daniel K. Allen, drawn on the cashier of the said bank, was good for \$5,450, and that he had a right to present the same for payment to said Heyer; whereas, in truth and in fact, the said Daniel K. Allen had not deposited in the said bank, on, etc., the said \$5,450, etc.

The other counts varied the mode in which the pretense was made, and concluded against the form of the statute.

The prisoner pleaded *not guilty*.

<sup>1</sup> New York City Hall Recorder. See 1 Am. St. Tr. 61.

<sup>2</sup> See 1 Am. St. Tr. 6.

*Hugh Maxwell*,<sup>3</sup> *O. Hoffman*,<sup>4</sup> *James W. Wilkin*,<sup>5</sup> for the People.

*W. M. Price*<sup>6</sup> and *David Ogden*<sup>7</sup> for the Prisoner.

### THE EVIDENCE FOR THE PEOPLE.

*Cornelius Heyer.* Am assistant cashier of the Bank of New York; defendant and his partner, the firm of R. & D. K. Allen, previous to 16th of April—five or six years—have kept a considerable account with that bank, and have during that time drawn a number of checks and kept their account good at the bank. Defendant frequently came to make deposits, and his usual way was to go to the desk of the receiving teller and return and exhibit his bank book at the time he presented checks. I have often observed to him, on presenting his check, "I suppose you have deposited enough to pay this check," to which he would answer "Yes" and exhibit his book as evidence of the fact.

On April 16 last, between 10 and 12, he acted as usual, except that, on presenting a check for \$5,450, which was in his handwriting, in the name of the firm, he exhibited his bank book but made no affirmation. I paid the check without asking any question, supposing that, by reason of exhibiting his book, he had deposited sufficient with the receiving teller to answer the check.

Subsequently we found that at the time he went to the desk of the receiving teller he deposited only \$1,209. I should not have paid the money without examining the account of the firm, had the check not been presented by the defendant himself, returning, as usual, from the desk of the receiving teller and exhibiting his book.

*Charles Wilkes.* Am cashier of the bank. The bank on the same day had paid five other checks of the firm of R. & D. K. Allen, in the handwriting of defendant, amounting to \$6,500; on examination it was found the firm had overdrawn to the amount of \$10,722.93. Defendant the next day admitted he knew when he presented the check of \$5,450 that he had overdrawn; said he had a fair prospect of replacing the money before 3 o'clock, but had been disappointed. Next day he called at the bank and told me that he obtained the money to pay certain confidential debts to persons whom he did not name, who otherwise would have been much injured. He entered into a negotiation with me relative to making an assignment of all his

<sup>3</sup> Id. 62.

<sup>4</sup> See 1 Am. St. Tr. 540.

<sup>5</sup> Id. 62.

<sup>6</sup> See 5 Am. St. Tr. 360.

<sup>7</sup> See 1 Am. St. Tr. 63.

property to the bank, which he at first offered, but afterwards refused. A civil action is now pending against him for the money due to the bank.

The MAYOR asked the counsel for the prosecution whether there was a case to be found in the books in which an indictment under the statute was maintained where merely a false show was alleged as the pretense and no allegation by words appeared to have been made by the defendant.

*Mr. Hoffman* said there was a case in *Durnford & East* (3 p. 98) in which it appeared that three or more persons came together to the prosecutor and one of them pretended that a certain bet had been made, and thereby caused him to join in this pretended bet and obtained his money. On an objection to the indictment it was held good. He sincerely hoped that the court would not undertake to decide this question, incidently, without hearing an argument.

The MAYOR said he had no objection that the cause should go to the jury, but was strongly inclined to the opinion that this prosecution could not be maintained.

#### THE EVIDENCE FOR THE PRISONER.

*Valentine N. Livingston.* Am a broker. A short time before the failure of R. & D. K. Allen, about the 16th April, defendant applied to me to borrow money, but I had then no funds. From the standing of the firm, would have lent them to the amount of \$3,000 without security.

*Samuel T. Skidmore* and *Cornelius Smith*, clerks of the firm, testified that before April 16 they had been in the habit of presenting checks to a considerable

amount to the bank, and the checks were promptly paid, without examining the account, and that sometimes the bank was overdrawn.

*George B. Thorp*, *Benjamin Looker*, and *Peter D. Turcott* testified that each of them had dealt with the firm and received checks to a considerable amount, which were presented to the bank and promptly paid without referring to the account.

*Mr. Hoffman* read to the court the case of *Young* and others, the same case before cited, to show that no allegation was necessary to constitute a false pretense. The statute was designed to protect the unwary against the impositions of the more artful part of society. He suggested whether it would not be the better course, as the doctrine on this subject was fluctuating and unsettled, should the court be in doubt, to have the jury return a special verdict for the purpose of having the question first argued here and carried into the supreme court for a final decision.

The MAYOR said that though he had no objection that the jury should find a special verdict, yet he should not advise them, either for or against that course. It was his firm opinion, and so he should expressly charge the jury, that this indictment could not be sup-

ported, either at common law or under the statute. And it would be affectation in him to say that, since he had first heard of the case, he had not bestowed on the subject a laborious investigation.

*Mr. Ogden* (to the jury): On the state of facts in this case, the defendant could not be convicted of obtaining goods by false pretenses, either at common law or under the statute. The pretense alleged is, that he represented, but without any verbal declaration, that he had made a deposit; which, in truth he had done. If, without any act or allegation on the part of the defendant, he had merely presented the check and received the money, his account not being good, he certainly could not be convicted; and yet little more was done by him on this occasion. He overdrew the bank; an improper act it is true, but one which cannot subject him to a criminal prosecution.

Then, as respected the law; the difference between the statute of 30 Geo. II., and that of our own State, was, that in the former, goods and chattels were used as terms of the most extensive import; but in ours, the words or other effects whatsoever are superadded. Though the promissory notes of another, while in a man's possession, may be called effects, yet his own notes are not so considered; and, in this respect, there is no difference between an individual and an incorporated body.

No case could be found in the books in which a conviction had been for an offense of this description where a verbal representation had not been made.

In the case of *George Lynch* tried in this court (1 Vol. City Hall Recorder, p. 138) it was decided that a man who drew checks on a bank, representing that he had money deposited there, and by that means obtained the money of the prosecutrix to a large amount, whereas he had no account with the bank, was not guilty of obtaining that money by false pretenses; and the then mayor, in his decision said, that the courts in England had strained the principle, upon which prosecutions under this statute had been maintained, too far. That decision, the counsel argued, emanating from our own

courts, would be regarded by the jury as more binding than any English authority.

He concluded by advising the jury against finding a special verdict, as suggested by the opposite counsel; as the only object in this proceeding was to carry the question before the supreme court; a thing which would subject the defendant to much inconvenience and delay.

The MAYOR inquired of the prosecution whether it was prepared with authority to show that the notes of a man, payable by himself, while in his own possession, could be considered as effects.

*Mr. Maxwell* (to the jury): Though it was a subject of regret, yet, on this occasion, he felt himself impelled by a sense of duty to differ from the court in the opinion expressed. There could be no doubt but that the defendant had been guilty of obtaining a large sum of money from the bank by deception and fraud; and the law of the land ought, if possible, to come in aid of the great principles of morality.

To constitute a false pretense within the statute, it is not necessary that an allegation should be made by verbal declarations. It is sufficient if the act, whether by words or signs, be calculated to deprive the other party of his money or goods. In this case the presentment of the check to the bank, if done with a fraudulent intent, was a false pretense within the statute; and whether fraudulent or not, was the question, and the only one, for the jury to decide.

From the various acts of the defendant immediately before and after the time of presenting the check, he harbored the design of defrauding the bank; he had done so, and ought not to escape the punishment of the law merely because in committing the fraud he had resorted to no false verbal declarations.

#### THE CHARGE TO THE JURY.

The MAYOR. There was no doubt but that the defendant in abusing the courtesy of the bank, by his overdrawing to

this large amount, had been guilty of a flagrant act of moral turpitude; and it was to be lamented that it was not in the power of this court to punish him for the act. It was a principle, applicable to the civil tribunal, that there was no injury without a remedy, but this did not apply to courts of criminal law.

The indictment in this case consists of three counts; the first at common law and the others under the statute, for obtaining \$5,450, the promissory notes of The President, Directors and Company of the Bank of New York, by false pretenses.

Although it had been in some measure conceded that the first count was not supportable, he deemed it requisite to recur to the principle of law applicable to that count, for the purpose of showing the jury the reason by which courts and juries had been regulated in cases of this description.

At common law it is necessary that the false pretense on which an indictment is founded should be such as ordinary prudence could not guard against; and, in the view of the court, by the exercise of an ordinary degree of prudence, the bank, or its agents might have guarded against this imposition.

It was their duty to have examined into the account of the defendant, and have ascertained whether he had sufficient money deposited before they accepted and paid the check.

The principle upon which decisions in cases of this description are founded, is illustrated by a number of cases in the English books: as where one was indicted for obtaining money of another by selling him a chain which was pretended to be gold, whereas it was base metal. So where a man was indicted for selling another a quantity of ale for eighteen gallons, whereas there were but sixteen; the courts in their decision said that these were not offenses against which ordinary prudence could not guard. In the one case, it was easy to have ascertained whether the chain was gold before the purchase: in the other, the man ought to have measured before he purchased the ale.

In the case of *Babcock*, decided in the Supreme Court

(Johns. Rep.) it appeared that one Dixon having obtained a judgment against Babcock, he came to the plaintiff and pretended that he had \$10 in his pocket to pay on the judgment, and thereby induced him to give a receipt on the judgment for that amount; the court, on mature consideration, decided that the indictment could not be supported.

It is, therefore, the opinion of the court that the first count of this indictment cannot be sustained.

The next inquiry is, whether the counts in the indictment under the statute, are maintained.

The statute enacts, that if any person by false pretenses shall obtain the money, goods, wares, and merchandise or other effects whatsoever, he shall be punished, etc. Before recurring to the construction of the term pretense in this statute, the court will direct the attention of the jury to the term effects. This term has been recently introduced into this statute, and, in this respect, it is altered; but still, as it is a penal statute, it is to be construed strictly.

The question which the court presents for the consideration of the jury is, whether the notes of an individual or corporate body, while in his or their possession, and before put into circulation, can be properly denominated effects. Should it be inquired concerning a man, how much is he worth? What effects has he? Would it be a proper answer to say \$100,000, when this amount consisted merely of promissory notes, payable by himself, and in his own possession? Are such effects taxable? And can it be that such were the effects contemplated by the statute.

Without expressing any opinion on this subject, the court have their doubts, and, for that reason, and because they are unaided by any authority, they leave this to the sound discretion of the jury.

A question, which is more important in determining this case is, what is a false pretense within the meaning of the act? the Court had examined the authorities relating to this subject with attention, and the result of his opinion, upon the most mature consideration, was, that to constitute a false pre-

tense under the statute, it was necessary that there should be a false allegation, relative to some matter or thing then in existence. It is true that the term *pretense*, in its general acceptation, and as explained in the dictionary, is not confined to verbal declarations; but from the time of the enactment of the statute in England until the present time, no case has occurred in which a conviction has been had on an indictment under the act except where the *pretense* alleged was verbal. In this case there is no evidence that the defendant, at the time he presented the check, made any declaration whatsoever, indeed, the contrary is expressly proved by the testimony on behalf of the prosecution.

Should the jury, therefore, in conformity with the opinion of the court, be convinced that to constitute a false *pretense* within the meaning of the act, some allegation is necessary, it will be their duty to acquit the defendant.

But it is said that all the circumstances in this case, taken in connection, afford evidence, if not of an express, yet of an implied false *pretense*. Independent of drawing the check, and carrying it to the teller, there was no act whatsoever, express or implied, which could amount to a false *pretense*; and these acts, either separately or conjoined, in the view of the court, do not furnish evidence to support a false *pretense* actual or implied.

The court is not about to say, nor do they conceive it necessary, that the case from Campbell, relied on by the counsel for the prosecution, is not law. Suffice it to say, that the case does not apply; for there the defendant drew a check on a banker, in whose hands there were no funds to answer the draft; but here the defendant drew a check in his own favor, presented it, and received the money. Independent of the defendant's going with his book from the desk of the receiving teller to that of him who paid the money, this is precisely the case of a man, who, without adequate funds, should present a check for payment, and thus overdraw his account at the bank. This, although an immoral and a dishonest act, is not the subject of a criminal prosecution.



In this case the question as to the intent of the defendant to defraud has little bearing; because if, by means of the false pretenses, against which the statute intended to guard, he actually did defraud, it is immaterial what his intent was, for the exercise of the means demonstrates his intent.

Should the jury in this as well as in any other criminal case, doubt of the law, they may find a special verdict to be prepared by counsel, containing the facts in detail, which are to be submitted to the judgment of the court. Of the propriety of this proceeding, the court will not undertake to advise the jury; but will leave it, as well as the other matters agitated during the trial of this cause, to the determination of the jury.

#### THE VERDICT.

The *prisoner* was acquitted by the *jury*.

**THE TRIAL OF FREDERICK EBERLE AND  
OTHERS FOR CONSPIRACY TO PREVENT  
THE USE OF THE ENGLISH LAN-  
GUAGE. PHILADELPHIA, 1816.**

**THE NARRATIVE.**

A large number of Germans had emigrated to America before the Revolution, and by the beginning of the nineteenth century they had two Lutheran churches in Philadelphia in which German alone was used. But by this time their children had grown to manhood, had learned the English language and not being able to hear anything but their father tongue in the two old churches, formed a third, in which the English language was used. The effect of this was that in a few years the membership in the two old churches diminished and soon had few communicants except the old men and women who had been born in Germany and the newly arrived emigrants from that country. Some of the members of the old congregations sought to remedy this by having English used in their churches, and got up a petition to the trustees to that effect.

But this provoked a counter movement and the publication of a document in which the signers bound themselves "before God and each other to defend with our bodies and lives our German divine worship against every attack and to oppose with all our power the introduction of a strange language in our churches." They demanded that the trustees should not permit a vote of the congregation to be taken on the subject; that a pernicious by-law which had lately been passed permitting members to speak in any language, except German, at business meetings, should be repealed; that the opponents of German should never be allowed to meet in any of the church buildings. And they threatened the trustees that if they al-

lowed a meeting to be held, even to discuss the question, "blood would flow" and one Schmidt, a leader of the German party, declared that if they did not win the next election by fair means they would "follow the command of our Savior and smite with the sword." The reformers' meetings were interrupted and broken up by groups of Germans who intruded themselves, and the men who advocated English were reviled and assaulted in their assemblies and in the streets of the city. When the day of the annual election of the trustees of one of the old churches arrived both parties attended in force. But it was more like a political caucus in an Irish ward than a church assembly. Beer and wine were distributed freely and the reformers were knocked down and driven from the premises.

Fifty-eight of the German party were indicted by the Grand Jury for conspiracy and convicted.

#### THE TRIAL.<sup>1</sup>

*In the Criminal Court of Philadelphia, Pennsylvania, July, 1816.*

HON. JASPER YATES,<sup>2</sup> Judge.

<sup>1</sup> "Trial of Frederick Eberle and others at a *nisi prius* court held at Philadelphia, July, 1816, before the Hon. Jasper Yeates, justice, for illegally conspiring together by all means lawful and unlawful, with their bodies and lives, to prevent the introduction of the English language into the service of St. Michael's and Zion's churches, belonging to the German Lutheran Congregation, in the city of Philadelphia. Taken in short hand by James Carson, attorney at law. Philadelphia, published for the Reporter, 1817."

<sup>2</sup> YATES, JASPER. (1745-1817.) Born Philadelphia; graduated Univ. of Penn. 1761; admitted to bar 1765; member Lancaster Co. comm. corr., 1765-1776; member constit. con. that ratified U. S. constit. comm. for settlement of whiskey insurrection, 1774 (see 11 Am. St. Tr. 620); justice supreme court, 1791-1817. Died at Lancaster. Author of "Reports of Cases Adjudged in the Supreme Court of Pennsylvania, With Some Select Cases at Nisi Prius, 1791-1808." 1817-19. (See Allibone's Crit. Dict. Eng. Lit. and Brit. and Am. Authors, 1871; Chamberlain, J. L., Univ. Penn. Hist., 1902; Martin, J. H., Bench and Bar of Phila., 1883.)

July 9.

An indictment had been found by the Grand Jury of the City of Philadelphia and presented to the Mayor's Court from which after the defendants had pleaded not guilty, it was removed by certiorari to the Court of Nisi Prius.

The indictment charged that Frederick Eberle, Frederick Buchhalter, John P. Kroecker, Charles Gunther, Frederick Bennecker, Adam Risinger, John Seyfert, Matthias Sheuerman, Theobald Schmidt, George Wienman, Conrad Weckerle, David Schuh, John Dorneck, Michael Knorr, William Yager, Christian L. Mannhardt, Jacob Link, John Dankworth, Christian Reisch, John Schlag, John Cruse, Henry Dolinert, Christian F. Cruse, Jacob Chur, jr., Gottlieb Schwartz, F. A. Schneider, John Chur, Henry A. Maxheimer, Frederick Hoeckley, Frederick Fricke, John William Berg, Charles Lex, Valentine Flegler, Henry Flegler, Frederick Schwikkart, Christian Jahns, Jacob Endress, John Seifert, Matthew Scheuerman, David Scheuerman, Jacob Scheuerman, Henry Schweyer, Caspar Pickles, John Bornman, Jacob Chur, Christian G. Schmidt, John George Dau, Jacob Eberle, John Schultz, William Weyman, John Peter, Henry Luben, Peter Selbert, Philip Zehner, Christopher Busch, Amos Burman, Henry Miller, Philip Eberle, and John Herpel on September 26, 1815, being members of the German Evangelical Lutheran congregation of Philadelphia, did combine, conspire, and confederate together to acquire for themselves unjust and illegal authority and power in the said congregation, and to oppress other members of the said congregation to prevent them from the lawful enjoyment of their rights and privileges, and by force and arms to prevent the use of the English language in the worship of Almighty God; and did bind themselves with their bodies and lives to the German divine worship; and in pursuance of their object did raise a riot and assault, beat, and wound members of the congregation opposed to them.

*Jared Ingersoll*,<sup>3</sup> Attorney General, *Horace Binney*,<sup>4</sup> *Joseph R. Ingersoll*,<sup>5</sup> and *Samuel Keemle*,<sup>6</sup> for the Commonwealth.

<sup>3</sup> See 4 Am. St. Tr. 625.

<sup>4</sup> BINNEY, HORACE. (1780-1875.) Born and died in Philadelphia; member State Legislature, 1806; judge Supreme Court Pennsylvania, 1827; representative in Congress, 1833; a leader of the Pennsylvania bar.

<sup>5</sup> INGERSOLL, JOSEPH REED. (1786-1868.) Born and died in Philadelphia; graduated Princeton; began practice in Philadelphia; representative in 24th, 28th, 29th, and 30th Congresses; United States minister to England, 1852.

<sup>6</sup> KEEMLE, SAMUEL. (1788-1847.) Admitted to bar, Philadelphia, 1811. Name was originally "Keehmle," but was changed by act of

*Moses Levy*,<sup>†</sup> *William Rawle*,<sup>‡</sup> and *Sampson Levy*,<sup>§</sup> for the Defendants.

The following jurymen were selected and sworn: Daniel H. Jones, Stephen Bassburn, David Snyder, Isaac Reed, John Silver, William Morgan, David Shatzline, Abel Pond, Jacob Wunder, William McCalla, David Rowe, and Tristram Campbell.

*Mr. Keemle* opened the case for the prosecution by reading the indictment and the petition of the defendants and others to the Church of St. Michael's and Zion's, which is as follows (translated from the German):

"We, the undersigned, members of the German Evangelical Lutheran Congregation, in and near Philadelphia, herewith give an honorable corporation to know our liveliest displeasure on the inconsiderate undertaking of introducing a strange language in our churches.

"At a time when our beloved congregation tasted the deepest rest, when the worthy German Gospel was preached among us with peculiar energy and power, when not only an increase of the number of our congregational members but a powerful spiritual awakening, particularly among our youth, appeared to manifest itself—exactly at that time it is ventured on to sow the seeds of discord, of disturbance, and destruction.

"We declare ourselves briefly by this opportunity and only aver to an honorable corporation, that we are determined (as we have also firmly bound ourselves before God, and solemnly to each other) to defend with our bodies and lives our German divine worship against every attack, and to oppose with all our power the introduction of a strange language in our churches.

"To this end we herewith apply to an honorable corporation, and to you, fathers and brothers, particularly, who in this respect cherish

assembly to "Keemle." Died in Philadelphia. (See Martin, J. H., Bench and Bar of Phila., 1883; North Am. and U. S. Gaz., July 21, 1847.)

<sup>†</sup> See 4 Am. St. Tr. 639.

<sup>‡</sup> See 4 Am. St. Tr. 624.

<sup>§</sup> LEVY, SAMPSON. (1761-1831.) Born Philadelphia; studied law with Brother Moses; admitted to bar, Philadelphia, 1787; studied little, but by "activity, wit, and humor" was enabled to rise to a fine practice; one of the incorporators of Pa. Ac. of Fine Arts. Died in Philadelphia. [See Brown, D. P., the Forum, 1856; Jewish Encyclopedia, 1904; Martin, J. H., Bench and Bar of Phila., 1883; Morais, H. S., Jews of Phila., 1894; Rosenbach, H. P., Jews in Phila. prior to 1800; Scharf and Westcott, Hist. of Phila. (1609-1884), 1884.]

similar feelings with ourselves, who with us prefer divine service in German to the English, and pray you, assiduously, in virtue of your oaths before God and our whole congregation, to guard our exclusive privileges and the welfare of our whole union, so that the tempter may not succeed in destroying our beautiful German establishment.

"We pray you, dear fathers and brothers, to direct a steady eye to the charter of our church, according to which, in important occurrences, at least two-thirds of the corporation and the congregation are required before any innovation can be brought about.

"We pray you, dear fathers and brothers, agreeably to a resolution of the corporation, not again to let it be brought to an election whether the English divine service shall be introduced in our German churches or not.

"We pray you, dear fathers and brothers, for the suppression of a pernicious example by repealing a resolution which permits the members of the corporation to speak in a strange language when the honorable church council is assembled on business of the congregation. Such an example hath in our view the most baneful consequences.

"We further pray you to make such arrangements that the opponents to the German language and German divine worship may never be permitted to meet in our school houses for the attainment of their base views, because we ourselves would thereby give them the means in hand for our destruction.

"We pray you, dear fathers and brothers, for the sake of the ashes of our ancestors, who gave their wealth, yea, their blood, to build us German churches, thereby to enable us to enjoy the blessings of the German Gospel. We pray you for the sake of the peace of our congregation, for the sake of the innocent hearts, who under present circumstances suffer the deepest sorrow; we pray you for the sake of the German Lutheran order—yea, we pray you for the sake of Jesus Christ our Savior—to comply with our prayers. And, finally, be assured that we will with all our powers—yea, with body and life—support you, dear fathers and brothers, in all such measures that may tend to the welfare, the advancement, and to the perfecting of our German divine service.

"Experience teaches us that if we give up the breadth of a finger of our property, of our exclusive rights and privileges, that we are then near our destruction. In that event we shall become the object of laughter of every civilized nation."

#### THE WITNESSES FOR THE PROSECUTION.

*Andrew Busch.* Was one of a committee appointed at a meeting of persons who desired to have English as well as German in the

churches to present a petition to the corporation. It was as follows:

"A meeting of a considerable number of the congregation of St. Michael's and Zion's churches was held last evening at the school house to consult on the propriety of having divine service performed in a language intelligible to them and their children, and they appointed a committee to confer with the corporation on this interesting subject. The committee, desirous of conducting the delicate task assigned them in the true spirit of Christianity and with a single eye to the union and harmony of the congregation, are ready and anxious to enter into a conference with the corporation, and flatter themselves that their overtures will be met with the same spirit which dictated this application and which actuated the members of the congregation they represent. They have full confidence that the good sense and Christian sentiments of the corporation will induce them to meet this overture without delay, and that an arrangement will be made satisfactory to all parties and which will reinstate the congregation in its former flourishing condition, so desirable to its best friends and the prosperity of the Lutheran church.

"By order of the committee.

"(Signed) M. LEIB, Chairman.

"September 26, 1815.

"Mr. George Honey, President of the Corporation."

When I was bringing this petition to the corporation in the room of Zion's church, a great many Germans were standing by the lantern post. We went in, and presently a person came in with a large stick, named Knorr. The corporation received our letter and were dismissed. Some of the persons had sticks; members of the congregation. No answer was sent to the petition. We met one evening three or four days after—Mr. George Rehn was our chairman—and in comes a whole parcel of Germans that were our opponents; saw a whole parcel outside; about 30 came in; I retreated to see what would happen. Motions were made by our members, when the others would cry "yes and no," tumultuously, to disturb the meeting. The noise was so great, we could do no business; we could not hear one another. Mr. Burckhardt wanted to step up and speak to them to be in peace. Christian Smith

went up to him and said, "You deserve a rope; you ought to be hanged long ago; you have sworn a false oath, perjured yourself, and you ought to be hung." I saw some fists going to strike; some of them struck. No business could be done; the chairman was a weakly man and very much frightened; we retired and appointed another day. Four or five days after, when we met, the seats were occupied by the opposite party. I asked the chairman, Mr. Eberle, "What! do you go to meet here this evening, too?" He said, "Yes." I said, "Then we will withdraw." We went in the other room and met by ourselves; they did not interrupt us then. Heard them say as I went out, "Sweep the Irishmen out." They disturbed us—sung, and then had a kind of prayer and made such a noise hallooing and knocking we could not hear one another speak; it was not possible to hear our own words.

I attended their meeting in the Northern Liberties in December; Eberle was chairman and Mannhardt speaker. Mannhardt got up and said, "Brethren, they want to steal our property, to rob our churches; they have associated themselves into a society; their articles were that they take in Irishmen, Frenchmen, Englishmen, and even black men to their churches, and we shall oppose them with all our bodily strength." There were about 200 or 250 there; the room was as full as it could hold. He said that in the corporation some members spoke the English language and that should not be allowed any more. A whole parcel jumped over the benches, clapped their fists together, and said, "We will come and take them out by their ears." They behaved like madmen, almost. Mr. Smith was one of the foremost to jump on the table, etc. I came away. They broke up with singing and prayer, like usual. Am acquainted in the congregation; used to speak to them about keeping the young to the church. Donneck said to me, "Blood must flow in the churches before English should be introduced." I said, "Can this be possible?" He said that it sometimes happened in England; that a minister would be thrown from the pulpit and the government took no notice of it. I told him we had a good country here; it was very different.

The election took place January 6; about 5 o'clock in the evening a great part of these men were intoxicated—these Germans, the opposite party to us. A person struck me on the elbow and I said, "Is this the way to behave

like Christians?" I was carrying a pitcher of beer to the judges of the election; it was so dangerous about 6, I went home; was afraid something would occur.

*Cross-examined.* Was one of the party for English preaching; the congregation was divided; there were respectable men in both parties; attended the election in 1816; can't tell whether there were legal voters or not; whether legal voters or not, there was a majority; no vote was taken on the subject of preaching, but each party put up candidates who were on one side favorable to the English and the other to German; Mr. Hoeckley and Mr. Lehr took their seats as judges; can't say when the meeting in the Northern Liberties was; went there because I had a right to go; it was said an improvement was to be made, to have a school in which English and German should be taught, and as I had youngsters, thought I would go and see how that plan would be laid out; many others in favor of English were there; never did take an oath that I would support the German preaching.

*John A. Uhler.* Some time last December I was one of the vestry. Mannhardt said, "I hope you will meet the corporation this evening." I said I would. Says he, "If any person had told me this eight days ago, I would suppose it had all come out of the hospital. A document will be laid before the corporation with a considerable number of signers, and not half an inch must be given, otherwise blood must flow." All he said was in German. Went to the vestry late; there was a great mob of people;



some were not of the vestry; we formed a quorum; one of the ministers makes a prayer; a petition was taken up; I moved it might be read again; it was in German; it was read a second time; it struck me from what I heard in the street, met, and saw, that it was not right to be there, and proposed to adjourn; according to what fell, thought one might have got one's brains knocked out; when we broke up I perceived nobody but the vestry. This was the paper presented; a petition was sent in which was in English and it was rejected because it was in English, though our secretary translated it; on the part of the English party a second petition came in German; the antipathy seemed to me to be because they asked for English. Generally a week or so before the election the vestry meet and appoint inspectors. I said the corporation should appoint inspectors; the German party carried the president should appoint; I begged him to appoint in due time, I was afraid of what might take place; he made answer that he had time enough, and I said I dreaded the day of the election, since they would ask counsel's advice and bloody work might follow it; I did not consider it legal to appoint. An enclosure was made where the inspectors and judges met; Mr. Lex belonged to the vestry and wanted to go in, but some person caught the tail of

his coat and pulled him down. They cried, "Kick the rascal out." Dr. Helmuth said, "This gentleman belongs to the vestry; he has a right to go in." Wagner was outside and wanted to go in; they had him like a child in their arms and he cried out, "For God's sake, don't choke me." Vanderslice commanded peace; a man was there who said he would tear every hair out of his head—Bohl, I believe. In Fourth street there was a great crowd and pushing and pulling; I went in and the school house was nearly empty; they said none of their brothers should be taken to jail; do not know whether Wagner was in; first I saw Hoeckley and Lehr taking votes. Mr. Cope was very much abused; young people about 18 or 20 did it.

*Cross-examined.* Am in favor of English preaching; did not join a party or meeting; was asked to by both parties. There might have been constables there; do not know that Vanderslice was employed some days before; knew nothing about Hoeckley and Lehr taking their seats; it was as much as one's life was worth to say anything to the judges; my intention was to keep myself peaceable; thought the election illegal; the tranquility of the election was grossly disturbed before Mr. Witman proposed inspectors. We did not vote for English and German; the German party had a considerable majority.

*July 10.*

*John A. Uhler.* I did not go into the enclosure, because I did not think it was safe without having my limbs broken, and if they could have reached Witman

they would have tore him limb from limb.

*George Witman.* Was elected a member of the vestry in January, 1815. The churches were

observed to be thinly attended; few were there but old persons and very young children. Conversations took place as to how it should be remedied; English preaching became a general subject; pains were taken to ascertain the opinions of old persons; very few young persons understand German. Mr. Geyer, Mr. Rehn, and myself called on Mr. Fricke, who said he knew English preaching was necessary; Mr. Hoeckley said he did not go to church. Dr. Helmuth was called on. First meeting was on September 25. We were interrupted by a number of persons who came in noisy, saying they could not understand, as we were talking Irish; that we should use German; they were voting yea and nay to the same question; they came to prevent our proceedings; they broke us up; no business was done except to appoint a committee of conference. On the 26th the corporation met; on going to the vestry I passed 15 persons near the church yard; Dr. Helmuth was among them; in the yard I passed through a similar collection of people. Mr. Busch handed in a paper from the committee of conference. Mr. Weckerly told me he knew well the contents; that a parcel of people were ready to pounce upon the church property as a cat upon its prey, and that the Germans had property enough to support their clergymen in case we all left the churches. I asked him in what situation they would be placed if the English party united with the congregation of Mr. Meyer's. He replied that any men who would propose it were damned rascals. A second meeting was at the school house

10 days after; a number of persons came in posses, saying some of us were traitors; that they could not understand Irish; that these in the corporation had sworn false oaths. Burckhardt said that what they did not understand would be explained to them if they would have patience. He was called a Judas, a traitor; that a rope should be brought and he should be hung. Another meeting was called at the school house in Cherry street. We found the room occupied by persons who had set themselves in opposition to us; we went into another room; we got through our business. On January 6 I went to the school room, after 9 (I was in the vestry); a number had their tickets in their hats, having on them the U. S. eagle; never saw anything like badges before. Had a conversation with Bremicke, who acknowledged he had been one of the persons who seized Mr. Lex to prevent him from going into the enclosure; don't recollect any person being in the enclosure except Mr. Long, Mr. Birnbaum, Mr. Lehr, and the two clergymen; the business of the day was told by Mr. Helmuth, and the reading of the accounts was commenced by Mr. Long; during the reading Mr. Geyer came into the enclosure, who was a member of the vestry. I arose upon a chair and observed that the right to choose judges was in the voters; that I was supported in this by the opinion of the attorney general, which I held in my hand; I moved that John Geyer and William Wagner should be judges. Noise and uproar followed; I heard cries of "pull the Irishman by the hair; turn him out." No judges were

appointed to conduct the election, either in the corporation or on the morning of the election. When I made the motion a number of persons were shaking their fists at me, making terrible faces and gestures. I called on those favorable to say "aye," and others "no"; a considerable majority were "ayes." Mr. Wagner was seized hold of by a number of persons, all strangers to me; I can't recollect any except Buehler and Schweichart. Wagner called out, "For God's sake, don't take my life," or "don't choke me," or both. Long and I attempted to assist him to get in by lifting him over. Buehler jumped over and said he was Wagner's friend and pushed us aside, and almost at the same moment Wagner got inside. Wagner appeared exhausted, trembling; his surtout and coat were torn. The stove, filled with fire, was thrown over. Lehr, who was inside, and Hoeckley, who had got in during the scuffle, were receiving tickets; I took a blank book to make a memorandums of illegal voters; the book was snatched violently from my hand. More than half a dozen were violently engaged in keeping Wagner out; in the scuffle as many as could get hold of him. There was a general cry of "Out with him, the Irishman." Some person looked over my shoulder and said I was writing Irish; I thought it necessary to move to a more secure situation. Buehler ascended the railing and, moving his hat, turning it round, said it was the will of the congregation that he should be put out, and a general cry took place of "Out with him." I remained there all day; about dark there was a cry of "Mannhardt comes,

our captain comes." I saw persons in the school room making way on each side for him, and several other persons who were with him. I was repeatedly cautioned; Buehler told me they had plenty to drink. I saw persons drinking, particularly Almen-dinger; do not know of any person being bribed; saw Lehr give a glass of wine to some person outside of the enclosure. For some time after I carried a cane when I went out.

*Charles Eberle.* One evening in our school house Mannhardt told me the corporation had met; that Meyer's corporation had sent a petition to get leave to preach Irish, and that some members of the corporation would favor it, particularly Mr. Witman, Mr. Lex, and old Haas—"Who would have thought we would have elected members into our corporation of such kind, but they shall not succeed, these traitors." Three months after he came to my house and said the plan for Irish preaching in the Camptown school house had been defeated; he did not think they had voted for such men as Witman, Lex, and Haas. I observed I was sorry the congregation was uneasy about it, but thought the members in favor did not mean any harm by it. Mannhardt said, "I know what the intention is; they intended to introduce Irish preaching into our churches, but before that shall happen blood shall flow." I said, "O! O! Mr. Mannhardt," and he repeated "Blood flows." He said, "I once delivered a speech in the school house at Camptown by which I stirred up all the Camptowners; I have it in my power to do it yet, and I shall do it again."

I was a member of the corporation in 1806-7-8. Generally a few days before we met in the vestry room, went into the accounts, and proposed some who should be appointed; the nomination was always made publicly in the corporation. I never saw anything like wine or beer on the table. Elections were always quiet and orderly, excepting twice. The German paper is Mannhardt's handwriting. On January 6 the gentlemen said as I came in, "If the Irish go so, it goes very well."

*John Geyer.* I was in the corporation when this petition was read; several persons came in who had no business, one had a cane or cudgel, and I was fearful of an attack; desired two constables to attend and keep the peace. Witman got up and made a motion that Wagner and I should be elected; a majority appeared in favor of it. Wagner was seized; Buehler caught him and threw him off; Wagner said, "Don't choke me"; one person then had hold of his throat. A cry was made to throw Witman out; Buehler jumped up and said, "You were engaged this morning and you must desist." He said he would not. Never saw so much riot or so much drunkenness; a collection of people with Mannhardt at their head were in Indian file staggering after him. I saw Reisch have Wagner by the throat. I was present at the corporation when the motion was made to appoint judges, and they refused because a resolution existed that the president should do it. The president was asked to appoint them, but he refused; asked him myself on the day of election, but

he did not on that morning publicly. It was the practice of the congregation to appoint them on the morning of the election; never knew an election when the judges were appointed except publicly by the corporation or by the congregation.

*William Wagner.* On September 25, at the first meeting, was present; had just commenced when from 20 to 30 people entered; they disturbed us with noise, crying out "aye" and "no" to every question; many went up in an indecent manner to the chairman with hats on, etc.; it was impossible to take a question; near the close they used threatening language and gestures. Smith was one and Schwartz. Smith said to Burekhardt that he had turned Judas and deserved to be hung. The noise and tumult became general; we found we could do nothing, and had to go away; many went the back way; did not think it safe to be among them. Another meeting, a few days after, was called; we came and found the school house full; we then retired into an adjoining school room, but the noise was so great we could not proceed; they were singing and knocking against the partition, but they finished it with a psalm. We appointed a committee to draft an address. Mr. Long at the election was reading off the accounts. Witman got up and said he had a paper, that the right of choosing inspectors was vested in the congregation. A great noise and tumult arose—"Pull the Irishman out!" etc. He put the question again and it was carried, two to one. I went up to the railing and put my hand on

the top rail, when I was caught violently by several persons and violently pulled down; made a second attempt and was again caught, and in the scuffle the cannon stove was thrown over; felt the heat very severely; found I was in danger of being burned or torn to pieces; got out with a desperate effort; was much exhausted; my clothes nearly torn off; shirt collar torn. Mr. Buehler jumped over after me; said he was determined I should come out; Mr. Geyer interfered and reminded him he was breaking the peace, that I had a right to be there. Buehler stated he was my friend and did not mean to hurt me, but I should come out, for I had no business there. Saw Hoeckley and Lehr taking the votes. Witman was assaulted and had his book taken away; Buehler got up on the railing and ordered Witman out, saying he should be taken out by the hair of his head. Saw some intoxicated either with rage or liquor. Heard a noise, "Make way for Mannhardt; here comes our captain!" A lane was formed and he came through it with a person at each side of him.

*George Krebs.* I was elected into the vestry first in 1790; continued for 21 years; from 1790 and before the inspectors were always chosen by the congregation in the school house; the corporation always attended for the purpose of keeping good order. In November I was at a meeting of the Charitable Society of the German Lutheran Congregation. Mannhardt came in at the head of 120 men; he was not a member of that society. He said, "Mr. President, I introduce to you a

number of good and real Germans, and wish them to be taken as members of this society, they being members of the German Lutheran Congregation." I objected on the ground they were not orderly members, and that Mannhardt had not characterized them properly. Finding myself in an awkward situation, being used to having order and decorum, I proposed that if a real member would make a motion which would be seconded, I would put it. That was done; they all voted themselves in by a loud voice. After they had been voted in I took the liberty to call them to order. Almendinger came up to the table and, in broken English, said, "Mr. Krebs, the next election," with doubled fists. Christian Smith said, "Mr. President, if we can't gain the next election for church wardens and elders by fair means, we will take the command of our Savior and smite with the sword." I called again to order, knowing this to be profane. Resigned my membership in the society. Was not disturbed in giving my vote; never saw ham and beer and wine at any former election on the table.

*Cross-examined.* I never did bespeak wine or liquor at Miller's tavern. There was a bill came before this society for liquor; I objected to its being paid. Never knowing a judge to be a candidate, I handed my vote to Mr. Lehr, not Hoeckley.

*Henry Burkhardt.* September 25, as I went to the school house there was a great noise; the cry was, "Are you Irish, too? Can't you talk no German?" Proposals were made to lay before the meet-

ing how English might be introduced with German, to keep the youth together. I mentioned the thing was not rightly understood. Smith got up and said, "You damned Judas, did you sell your mother language like Judas did Jesus? Take a rope, make it round his neck and hang him!" Jacob Knoess made use of the same language as Smith. I said to Smith, "What do you mean? I am for German as much as you, or more." He said, "We know you." Speel came up and said, "You better go home." John Mackie came up and struck me in the face, and I went out the back door. Mr. Lex was struck by the same man. Before the last election a petition was sent in from St. John's church for the privilege of the school room in the Northern Liberties for English preaching. Donneck came to my house and said they wanted to drive the Germans from the church. I said it could not be done, for a majority rules. He said, "Before it takes place blood must flow." He said there were a great many who would sacrifice their lives and would do the same as they once did in London when they wanted to have English preaching in the German church; that they rolled the beer and brandy in the church and had a fight, and they fought like fighting cocks, and the same they must do here; and if English preaching would come and a preacher would go up into the pulpit, he knew one Theobald Smith who would bring his hammer along and hammer him out of the pulpit. On the day of election Smith had a stick; Cruse had a club about 2 feet long. Buehler, Jacob Shuh, and Reich

laid hold of Wagner. Shuh came up and spoke to Stief about English preaching, and said, "As for you, after a while you will be just as much as an old hat you throw in the air," and if I would say another word he was the very man that could tear me all to pieces and poke me in the gutter. I told him he had better try it. Jahns said, "They had plenty of beer and wine, and victuals to eat, and they live very well." Never knew them at former elections.

*George Kline.* I was at the school house about 4 o'clock to give my vote; they had two barrels of beer emptied, and a great wet, as if spilled, and in the cupboard, crums, puddings, sausages, etc. Mannhardt asked a person who came in to partake of wine; he presented beer. Saw Mannhardt give another person a dollar note to go and spend, and told him he would wish him to go and bring in as many German tickets as he could. Did not hear anything about ammunition. He told him he had been hard at work that afternoon and thought he ought to allow him something for his trouble. Heard blows given but did not see any, on the table and on the stove; heard a little combustling there.

*Cross-examined.* Was offered nothing to drink. Mannhardt said, "Our provisions are out now and I have none to give you, but here's a dollar note, and you can go and spend it, and you can go and bring in as many votes as you can, and at 8 o'clock they should try to be altogether there, that was the limited time, and then they should be on their guard." Saw two or three sleighs at the door before I came

in. Was not at a tavern or beer house in Cherry street that day.

*Godfrey G. Cope.* As I came in, Speiss asked, "What the devil are you doing here? You are an Irishman." I said, "Why, Speiss, is it you?" He said, "Yes; you ought to be kicked out. Out with him." He was a tenant of mine. Saw Wagner engaged with Shuh and Buehler; had him off the ground. Wagner said, "Don't choke me, for God's sake!" They upset the stove. I said, "Get out of the way; I want to go up and vote." He said something—John Piper—and I said, "You snot-nose," and he said, "D—n you, I have taken the sacrament three times." He was pretty well intoxicated. I walked up and voted, and Piper said I had no right. Hoeckley said, "Who said so?" and took my vote. Met Flegler and I said, "Daddy, you seem angry; give us a pinch of snuff." He said, "Yes, by God, blood shall flow before you shall have your ends answered." I said, "Daddy, you have one foot in the grave and ought not to think of such things." He said, "I know you." He appeared to be intoxicated. Two or three hours after, I saw him and asked if he was still of the same opinion. He said, "Yes, blood should flow before our ends should be answered." I was in the vestry nine years. The judges were nominated the first year I was there by the congregation; after that the corporation named them a day or two beforehand. Saw a ticket stuck in Schwartz's hat, same way as they have it at the general election; he told me if I did not like to see it there I might look into his b—m; said

it in a worse way than that, which I could not repeat here; he black-guarded me from time to time. Had intended to stay to the end of the election, but was threatened so hard. Schwartz said, "Only you stay a little longer and you will get what you deserve." Was afraid and I retired from fear of being beaten. Was threatened six or eight times. A day or two after the election, Charles Lex said in the market, "What do I care; I got \$9 for my garlicky sausages that nobody else would buy, and they eat them like sugar." Weckerle said in the mayor's court, "You are a set of d—d eternal rascals!" I said, "For why?" and he said, "For bringing in this suit in court." I said, "Don't call me a rascal; I am the father of 13 children."

*Peter Lex.* Have been a member 40 years; have been in the vestry. Formerly inspectors and judges were chosen by the congregation on election day. This was altered when the dispute arose about English preaching.

*John Long.* On January 5, as treasurer, I attended the committee of accounts. I was requested to attend next day. Dr. Helmuth was there, and others; we went about 9 o'clock. Several persons were there with eagles and tickets on their hats. Dr. Helmuth read the rules and delivered a prayer, telling them to behave as Christians and brethren. Heard a voice say, "Let Mr. Lex come in." Dr. Helmuth said, "Let him come in." They prevented him. Witman stepped on a chair and held a paper in his hand and nominated Wagner and Geyer, and the ayes appeared to have it. Geyer was in the enclosure and

Wagner in the middle of the school house. Wagner got across the railing, and I said to myself, "Here is a man will be killed." Saw smoke and the stove was knocked over. I went away. We only begged either of the churches for English preaching.

*John Antrim.* A number of the persons came forward voluntarily—20 or 30—without being called on.

*John Newman.* I frequently saw Smith, who said they had lads; that there was a German vessel here with a number of sailors on board, and that they intended to keep it here until the election was over. Smith was a baker, with crooked legs.

*Conrad Ripperger.* The meeting I attended, a parcel of men entered the room and began to behave in a rude and violent manner. Christian Smith was there, very riotous. Burkhardt wished they would behave quiet. Smith said he deserved a rope. Mackie then struck Lex. On the election day Witman got up with a paper; a large majority, at least two to one, were in favor of the nomination. Buehler and Shuh were very active; Reisch, too. I stood on the school bench and had an opportunity of seeing. Saw Schwartz, with a ticket on part of the hat with an eagle, which they called a bat, and he said, "I've been in many a fray in this country and I mean to see this out." Met Cope and Lentz, who asked me to go down to the mayor's office to send peace officers to keep harmony there; he sent some, but they could not keep peace. In the evening they were about to take a noisy person away when Christian

Smith stood on the bench and said, "This is a German brother, and you German brothers let us assist him; he shall not go to jail." They went out in a great tumult, and a riot began; there must have been 200 or 300 persons implicated. They rescued the man; saw him torn from the officers.

*Cross-examined.* When the noes were called, one person would say no several times. When Witman was in the enclosure, Chur repeatedly requested Buehler to bring him out by the hair. He seemed in an ungovernable passion

*Jacob Mechlin.* Was present when several voices said, "Let us go for our 'hauptmann' or headman." Was standing with Mahany. They went out and soon returned, crying out, "Make place, Mr. Mannhardt is coming," and some voice said, "The savior is coming." He came up like a sergeant's guard. Buehler was at the head, Mannhardt followed, and Lex in the rear of the line, and they were marking time like soldiers. Saw Mr. Mills in the school room seated in the window; a person came up and told him he had no business there, and Mills said, "Speak English, I don't understand German," and the person then knocked him off the bench. Smith came in and said, "There is a German brother in distress and he should not go to jail," and a number rushed out. Judge Geyer was assisting Hart, McGinley and Smith.

Their habit was to harass us whenever they could find us—drove us out of the school house, and then we met at the Commissioners' Hall in the Northern



Liberties and afterwards at a private school house. Weyman was one of the first that mounted the railing for the purpose of tearing Witman out.

*George Rehn.* When I came in I found a large assemblage of people and thought we would have a large meeting, but found them to be those who had opposed us before. The door was locked. One man told me that I had taken a great deal of pains to establish the school. He said, "You shall not be at a loss, we will open the door." They did so, but kept possession, and, finding nothing could be done, I went away. Dreer was there, and Caspar Pickle.

The committee asked me if I would favor them. I told them I would for the sake of my children, not for myself, because I understood German.

*George Krebs.* After the gentlemen had endeavored to establish German preaching, I thought that German was now so secure, to let the children and grandchildren have their due.

*John A. Uhler.* Met Weckerle when I came from the grand jury. A gentleman said, "Weckerle, you are a Dutchman." I said to Weckerle, "Try to settle

this affair, for I really dread it; if I could do anything at midnight I would do it." He seemed to be in a great passion, but I said to him, "If you will hear me, I will hear you." He was making a great noise. He related a great story: "Here, gentlemen, here's a man always says, 'Make it up, make it up,' but he holds a stick over one's head—breaks their head or gives a black eye, and then says 'Make it up.'" I asked him, "Mr. Weckerle, you acknowledge you have a black eye, I see none; if you have one and are afraid of having it knocked out, I beg you to have done." He seemed in a great passion. The first time I met him after that, I stepped into the court house and asked a number of men what was done in that business; it was said they had adjourned until 3 o'clock. Mr. Weckerle called me and said, "Mr. Uhler, what has become of the flying lions? You damned scoundrel, I firmly believe you must be one." I had mentioned before a peace officer that the Germans had come over the benches like flying lions. I went to step into the mayor and make my complaint, but Mr. Long advised me not to do it.

#### THE WITNESSES FOR THE DEFENSE.

*July 12.*

*Mr. Sampson Levy,* having stated the facts as they would appear in evidence, opened the case on behalf of the Prisoner.

*Frederick Dreer.* Was a member of the corporation. The corporation gave us the liberty to use the room in Cherry street any particular day we chose. On a Monday, in September, 1815,

we were to meet together. About two evenings before we met to see if everything was prepared for the oration which was to be delivered. The same evening and at the same place there was to

be a meeting for English preaching. Our president, Mr. Fisher, chose that we should not hold this meeting on that evening. Some days after, the English society met in the school room in Cherry street and we met on the same evening in the Fourth street school house. Some of us went over to the other school house to see how they come on, on the English side. They had some articles read by Mr. Keemle in English. I did not stay long there; saw it would create a disturbance in our congregation. They were asked if they were in favor. Some said yes, some said no. Heard Dr. Leib say that they put the cart before the horse, they went on a wrong way. It was said the same time they read the articles; he said it would make a disturbance with the congregation, they ought to go on in another way. Did not stay till they broke up; there was nothing out of order that I saw. The articles were drawn in such a way as to give us what they please, and hurt a great many's feelings. I went home. Some days after, we began business one evening. Heard a knocking on the outside door; went out and opened it; there was Mr. Uhler and Mr. Busch. They asked for Mr. Lehr. Mr. Lehr brought half a dozen papers in from these men written in the English language; a kind of petition sent from the English side. Did nothing in that business that evening. Before the election came on the corporation came together to make a rule for the election day. Mr. Witman asked the president if he would take the question when he made a motion. The

president said yes, if it was in the proper manner, agreeable to the subject. Witman moved that they should choose the inspectors, but the president did not agree to it, and other members got up and said it was contrary to our rules and by-laws, it was against their regulations. He proposed to repeal that by-law and proceeded to voting, and there was a majority to preserve the by-law and a small number against it. It was voted that the whole election should go on as formerly and the by-law be preserved; that the president should have the same authority he formerly had.

On January 6, 1816, in the morning, between 8 and 9, we met in Cherry street in the school house for beginning the settling of accounts of the corporation. Dr. Helmuth read the church rules and prayed, and the treasurer, Mr. Long, settled his accounts. Mr. Witman jumped on a chair and hallooed out that he had taken the advice of the government; that he had a right to appoint the inspectors of the election, and those who were for it should say yes, and those against it no. There were a great many more against it than for it. Heard a great many saying "no" more than "yes." Witman said he himself had a right to choose the inspectors. Our inspectors were in the room, one was within the enclosure and one without—Mr. Lehr and Mr. Hoeckley. The president informed them they had been appointed inspectors, and then a disturbance took place. Some of the members intended to put Mr. Wagner into the enclosure. Ripperger, An-

drew Busch and Mr. Steiff and many more whom I could not see well. Several of our side wanted to hold him back; Mr. Reisch and Mr. Chur. They did not injure him; it lasted but a moment; did not see that his clothes were torn. Mr. Reisch put his arm on the top of the enclosure and with his other arm held Mr. Wagner, and Mr. Long with his fist struck on that hand which was on top of the enclosure. There were Long, Loyer, Birnbaum; and Mr. Geyer stepped backwards and called upon the constable, Vanderslice. There arose a great crowd and pressure near him; there was a stove near the steps, and some of them tumbled down from the steps and fell against the stove; the stove fell down and tumbled into pieces. Mr. Wagner afterwards came into the enclosure. Witman stood near the post where the votes were handed in, with a paper in his hand and set down the names of the voters on both sides; he put down some and some not; we did not know what use he was going to make of it. Heard Mr. Lehr desire him to set a little back on the table. Mr. Weckerle said one of our fellow brethren was beaten very severely on his head—Mr. Speiss. I was not present the whole of the afternoon. Saw nothing disorderly until evening. As I went into Fourth street

some person went before me and knocked behind a stick, touching me under the arm. It was a sword cane. The man was young John Cope. The same evening Mannhardt gave in his vote. When he entered the school house some person—William Berg—came with him, and he said, "Mannhardt comes," and at the same time everything was quiet in the school house. Andrew Busch called out when Mannhardt was coming, "There comes the captain of the Germans," and after Mannhardt had given in his vote, and as he turned himself around afterwards, Busch called again, "This is the Germans' Lord God." Heard nobody else use such expressions. It was middling quiet at that time. Mr. Weckerle asked Mr. Uhler how the flying lions were coming on. Mr. Uhler said, "You called me a damned rascal." Weckerle replied, "No, I have not said so," and if he would be such a one he might be so, he had not called him so. Uhler went away and said he would sue him; Weckerle replied he might do so. Saw nobody drunk. I myself was dry, but did not take a drink. Nobody could get drunk—nothing was left. There was no liquor in the school house except beer. Saw some beer on the table where the inspectors were. Busch took some beer over to the inspectors.

### July 13.

*Frederick Dreer.* At the meeting in Plumb street, I went down that evening to the lower room; Mr. Rehn came there; he said the door was shut upstairs. I went up and told Mr. Rehn that I was going up and he might go

up with me. He followed me up to the room; the door was open and the candle was lighted. I did not see it shut that evening. This was a fippenny-bit society we wanted to form; there was one in the city, but it was too

far off and we wanted one in Southwark. What hindered the business from being done? The coming up and going down, and some of them staying there all the time. We made an end by singing a hymn and broke up. Did not hear any say they were going away because the doors were shut and they could not do any business; heard nobody else but Mr. Rehn say they were shut.

*Cross-examined.* Do not remember saying that they might thank God that they got out with their lives. Do not remember Mr. Harris saying to me, "He must have been a powerful man who would have prevented them from getting out of the school room with their lives." Have been in this country 10 years; am a citizen of the United States.

*Rev. Dr. Schaeffer.* We met in the vestry room on the day of election about 9 in the morning. The officers of the corporation, with our treasurer, Mr. Long, went over to the school house in Cherry street. Rev. Helmuth read the church constitution respecting our election. Our treasurer read his accounts. Mr. Witman stepped on a chair, began to speak, and I took my records and went out of the school house as fast as I could. Saw they could not keep quiet from their appearance.

*George Honey.* Was president of the society and appointed the inspectors. When the accounts were read off, Mr. Witman jumped on a chair and began to harangue the people. In the meantime I called to Mr. Hoeckley and Mr. Lehr to take their

seats as inspectors. Had all their names written down on a piece of paper; can not say whether I laid it on the table or not. All this time Mr. Witman was on the chair haranguing the people. Because of Witman's getting on the chair he got the upper hand of me. I called out the names—he called to the people that he had it from the highest authority, the attorney general, that they had a right to nominate or choose the inspectors. I told the inspectors and clerks to come and take their seats and go on with the election, he speaking at the same time. The people got into a kind of uproar, a stir; a good number called out "yes," but a large majority, more than two to one, "no." As soon as Witman put the question a number cried out, "Out with him, out with him!" Witman stood in the enclosure, took out a paper and wrote, and continued writing all day, till they were done voting. He was repeatedly requested by the inspectors to come out of that spot, to sit down on a chair or somewhere else; they were incommoded by him. He had nominated Mr. Geyer and Mr. Wagner as inspectors, but the people would not suffer it. They would not allow Wagner to come into the enclosure; a number of them took hold of him to keep him out. I can not say much more about the election; the election was carrying on, I went out. The votes I took notice of were all against us; a number of them came from Meyer's church, so called, and some from St. Paul's. When they came to count the votes, Witman said, "The votes ran all to one side like the handle

of a jug." As to appointing inspectors and clerks for the election, we thought it so small a matter, we did not care much about it; we generally adjourned over to the school house and when the treasurer read his accounts the president appointed whom he thought proper. Did not appoint the inspectors of 1814, and do not recollect that at any time

the congregation ever appointed the inspectors at any election.

*Henry Link.* Have been a member of the corporation six years. I attended the election, and when I came, about 11, it was all quiet; stayed there about a quarter of an hour and went away. The stove was tossed over. Did not see any man abused by the constable.

*July 15.*

*Christian L. Brandt.* I have been a member of the German Lutheran congregation 20 years. The latter end of September, on Sunday morning, when I went to church I heard several members say, "They want English preaching in our churches again." I said, "I don't believe it." Went on Monday to the school house in Cherry street; saw several I knew, especially young Mr. Jacob Lex. Mr. Rehn was chairman and there was another, Lawyer Keemle, who was secretary; he read the resolutions. In the first resolution they wanted English preaching in the German congregation—to petition the congregation to get English. Dr. Leib stepped up and said, "You are putting the cart before the horse." Then the secretary said, "No; I have got the cart into the horse," and made them all laugh. Mr. Leib said, "There is no law in the United States, and Pennsylvania, which can take the Germans from their rights; you must go on more softly; when you go on that way you make a disturbance in the congregation, you are declaring war against them; you know the consequence about seven or eight years ago." They took the vote; there were a good many ayes and good many noes. They

then formed into a society for the purpose of making rules and agreements to have English preaching. Mr. Leib stepped up again and said, "For what is that society? It is to make at once a declaration of war. You know there is a society for the purpose of divine worship in the German language." Some were for and some against it. They appointed a committee of seven to wait on the corporation. Do not recollect them all. There was Busch, John Long, Peter Lex. Afterwards some other people came in. Someone hallooed out, "Hurrah for Dr. Leib." I was a little for the English, too, if it could be done in a peaceable way; we had a trial before and I know what trouble it is. Went over to the other school house and signed a paper; never heard it read and do not know what it was. Did not hear any disturbance, only some were for it and some against it. These meetings were always orderly and decent; they began first by a song from the hymn book and prayer, and when the business was done they finished likewise in the same way. Mannhardt troubled himself and gave them good advice to behave themselves in a Christian manner and peaceable. At the election the

conduct of the people was decent and orderly. Mr. Busch said, "Well, Andrew, how goes it?" I asked him if that was Dutch or English beer; he had it in his left hand and I saw him carry it within the enclosure, where the inspectors were.

*Henry Luederis.* I attended the Cherry street meeting by mistake. Found Dr. Leib and a young man. Dr. Leib told him he went to work in a wrong way, every member of the congregation ought to be invited to the meeting; he thought it would not be to the satisfaction of the congregation; it was putting the cart before the horse and would not meet with their approbation. There was a committee whose duty it was to collect as many members as they could, of young men, to join the St. Michael's society. Mr. Burkhardt observed they should not take but Germans or descendants of Germans; but, as he expressed himself in German, they did not appear to listen to it or take much notice of it. The question was taken that they should not confine themselves to any, they should take Irish or French or any other nationality who wished to become members of that society. I did not like the proceedings and went off. I heard an address; nothing struck me, but that if the Germans would not give their consent they should repent it in sackcloth and ashes.

*John Adam Kepple.* I have been a member of the congregation 30 years. Met in the English school house the Dutch party. They began singing and praying and had some conversation about these disturbances, and concluded

with singing and praying. We came out peaceable and quiet. There were some of them over in Cherry street in the school house, so there was a party of us went over and a part went home. Went over with Baker Schmidt. There was Dr. Leib among them; Mr. Busch was there; did not know them all. Mr. Schmidt made a little bubbling out in Dutch; then Mr. Busch answered, "Hush, hush." "Aye," said he, "you call out 'Hush, hush,' but here the enemy is going to take our rights away, and if we hold our tongues we will lose our rights; but my mouth is open yet, and it will not be shut until you draw a rope around my neck, and then I can not speak any longer." Dr. Leib said, "Gentlemen, do not go on so, for you put the cart before the horse. If you go on so you will bring war on the congregation." On which I took Schmidt home with me. We left them disputing among themselves. On the day of the election I was there about 9 o'clock; the church reckonings were not quite done. Dr. Helmuth said, "Mr. Long, take care of the books and writings, and Mr. Honey, you put in the inspectors according to the rules of the church." I saw a piece of paper on the books with some writing on; saw Witman look at it. When Dr. Helmuth came up to Mr. Honey to put the inspectors in, Mr. Honey caught hold of that paper. Witman jumped on the chair and repeated he had the power from the attorney general to put the inspectors in; he called out for Wagner and Geyer. Geyer happened to be inside and Wagner outside. Wagner made

an attempt to go up to the railing to go over, when some of them about, of both parties, took hold of him, some pulling him back, some trying to get him in; in pulling him back—there stood a large common stove—with the crowd pushing against the stove they upset it. I was standing on the platform most of the day. While Mannhardt and the other men were coming in, Busch cried out, "Open the door wide, the Dutch captain general is coming." He repeated it two or three times. Mannhardt never said a word to him and went up and gave his vote, and they turned and were coming out again, and as they were coming out he cried, "There goes the Dutch, their god and their savior."

*Tobias Buchler.* Am a member of the German congregation since 1807; not a member of the corporation; went to the schoolhouse in Cherry street; understood there were to be two meetings; went over to the German meeting in Fourth street, and heard the proceedings read; went to the other meeting as I went home; when I went in the chairman had taken his seat, doctors and lawyers were sitting round the table. Mr. Keemle, the secretary, read off the address, and after that the resolutions; some of them related that there should be a meeting in the school house in the Northern Liberties. Dr. Leib got up, and said, "I have received an invitation to attend this meeting; I did not know what their object was, I take it to be the meaning, although the address and resolutions were not written correct, yet I take it to be the meaning

to have English preaching." We are here to ask this incorporated body a favor; if we are going to ask this incorporated body a favor, it must be done in a milder manner." Says he, "I will just make a remark concerning this; suppose a man comes to me to ask a favor, to give him this or that, and will say, you shall give me this or that; you are doing this, you are trying to control that congregation. It is true my wife and family cannot understand German, and they cannot go with me to the German church; as for my own ears, the German can tickle them enough for me, to do good; but if this could be brought into effect without raising a noise, and going into the same disturbance there as seven or eight years ago, but not upon those conditions the secretary holds in his hands this moment. Gentlemen, I will tell you at once, proceeding in this manner, is declaring war at once;" then he sat down. Up gets lawyer Keemle, he said, "respectable men had met and made that address, those members who had met had certainly considered the resolutions, and he thought it no more than right to adopt them." Witman got up; he spoke a long time, and said, before he sat down, "I move these minutes be adopted." Dr. Leib then got up and said, "I hope, gentlemen, they will not be adopted in this way as they stand, or I will be necessitated to withdraw." Said he, "if we go on in this way, it will be putting the cart before the horse;" he then moved a committee be appointed to investigate these resolutions and

make them come out not so hard; he then sat down; Mr. Keemle got up and contended they should be adopted. He says, "this man objects to this proceeding, he says we put the cart in the horse; he meant, to put the cart before the horse; the members laughed at the mistake of the secretary; it was all the disturbance.

Attended at the German meetings, previous to the election. The first one in the Northern Liberties, when the Germans met, we had our chairman and secretary, and it was opened with a psalm, and they prayed. Mr. Busch came in. Mr. Mannhardt read a plan in order to amend our school; the principal reason of the English party always complained, that our schooling was not good, that the children could not be learned high enough as they wished. Mr. Mannhardt mentioned something that had happened at the English party, while Mr. Mannhardt was mentioning this Mr. Busch sat down, and said to the man next him, "that's a lie;" immediately one of the members got up and said, "here Mr. Chairman, Mr. Busch has come here to see us, and while Mr. Mannhardt was reading that, he said to the man next to him, all that Mr. Mannhardt has said is a lie. Mannhardt said, 'I can prove what you asked for;' pulled out the invitation, and said, 'here is enough to prove, you want English preaching.'" It was what Mr. Busch said, caused these interruptions.

Did not attend the English party; it was a hard matter to

get in the English meeting; they had an address which was signed by all that was for it, and afterwards none could get in but those who had signed it; they proceeded with locked doors.

At the general election in January I had the honor of being appointed one of the committee of vigilance in 1816; was charged that the election might be kept quiet, and as there were a good number of old Germans, who could not get along, we were to attend to these people that they might give their vote without interruption; the boys sometimes crowd round and impede the old people. I went into the school house, I found some members there of both parties; saw Mr. Vanderslice come in; he told me he was ordered to stay there. There was an inclosure made by the society on purpose for the inspectors and clerks to set in, that they might set in comfortable and take in the votes. The committee of accounts came over to read off the accounts as usual; Dr. Helmuth made a speech in German; he mentioned this day was appointed for the election of church wardens; read the by-law, when the election was to be held, and how they were to proceed. Mr. Witman sat in there, and Mr. Honey also—Honey had a piece of paper, on which were the names of the inspectors and clerks he was to appoint. Mr. Honey left his chair about four or five feet; while he did it, Mr. Witman got up, took the spectacles off the paper, turned it and read it and shook his head, and went away



again. There was a man, stood next to me, and said, "what does he shake his head for," why, said I, this paper, the names of the inspectors were on, and perhaps he does not like them.

Mr. Honey took up his paper and nominated his inspectors and clerks; Mr. Witman in a violent manner jumped on a chair; says he, "no, no, gentlemen, the advice of the attorney general, the highest law officer in the State of Pennsylvania, is that the congregation has the right to choose the inspectors, and I move that Mr. Wagner and Mr. Geyer be the inspectors; all those who are for it say yes, and those against it, no." There was no distance between the questions as usual; he was too much in a hurry. There was a noise, some cried yes, and some no; some in Dutch, and some in English; there was such a confusion, I defy anybody to tell which carried it. Mr. Wagner tried to get into the enclosure; Mr. Birnbaum had hold of his arm pulling him in; I took hold of his leg, says I, who is this, some said, it is our inspector, I held up the leg to assist him not to go in, but not with any bad intention; some were pulling outside and some in. Why, said I, Mr. Wagner is it you, if he wants to get in, let him get in, I am here myself. Mr. Witman said (and got up on the chair again), "all those who are in favor of the English, will go to Mr. Ripberger;" "oh, no," says Mr. Geyer, "that won't do, it is not legal." Then Mr. Long says, "Mr. Witman, you may as well be quiet now, it has been done always so,

and all we have to do is to try to get votes in, we will gain the election yet." Mr. Witman submitted, and got a blank book. Said I, Mr. Allmendinger, you are an older man than I am, come in here. The place where the inspectors were is about four feet high, by it is a pillar. Witman pressed himself in there and sat examining people he had no right to, as an inspector. Mr. Leib told him frequently, "Mr. Witman, I wish you would go and sit down, I am very inconvenient here, I have hardly any room;" but he would not pay any attention. He did not move, he stayed there two hours or longer. There was no further interruption but what Witman made.

When in another part of the school house, I heard some one cry, "Mr. Mannhardt is coming to vote." Did not see many drunken, staggering men that day? I heard Mr. Helfenstein's case was to be decided. I went; court adjourned 'till afternoon. I stood on the step, Uhler stood on the last step; some old woman was there, she said to Weckerle, "what, Mr. Weckerle, are you come to take our minister from us;" Weckerle said, "why woman you are wrong, I do not care about you or your minister." Uhler stepped in between and said, "why, Weckerle, you are not going to strike this woman," Mr. Weckerle said, "Mr. Uhler, you are crazy or a fool, or something of the kind." Said I, Mr. Uhler, Mr. Weckerle's not going to strike this woman, nor do you wish to make a disturbance by interfering.

July 16.

*Cross-examined.* Keep a grocery store; we had two barrels of beer, some wine, I sent for it myself; there was no spirits or liquor of any kind, I sent for a gallon; filled one bottle and took it to the inspectors and some gammon and bread, the wine was drank there, whether Witman drank I do not know, it was drank among them; I do not know whether it was paid for or not; it was not bespoke by the society it was mentioned there; in our committee of vigilance it was mentioned that we had better have it; as in some other elections we thought that some would argue with one another at the tavern; we got this that they might not go to dispute at the tavern; we had some sausages; I eat some myself.

The reason I sent for the wine was, there was some old members coming to vote, I thought that when these old members came to vote, I would give them some wine and it would do them some good; it was for no bad intention. When I felt hungry I went in and took some beer. I got that wine upon my own account without consulting the committee.

*John Uhler.* Remember attending at the election in January with my sleigh. They hired me at two o'clock to fetch the old men there and home; went to the school house and they had no beer and Mr. Mannhardt gave me a dollar, says he, "go get something to drink;" had to take some old men down the neck; it was nine o'clock before I got home. Did not see anybody intoxicated there; this

dollar went in part payment of what I was to receive for the sleigh.

*Frederick Oberthur.* At the election I saw John Cope with a sword cane. Was at the opening of the election. Heard some of the accounts read off, and Mr. Witman sprung up on a chair and cried out, that by the highest authority of law, he would nominate John Geyer and William Wagner inspectors of the election. He took the question, "those who are in favor of it say aye, and those against it no." Some cried out aye, some cried nay in German, and some in English, and there was such a mixture, there was no such thing as telling which carried. Some of the English party cried out to Mr. Wagner, that he should take his station. There was a great noise and scuffle took place, trying to get him into the enclosure; this introduced disturbance; they tried all force to get him over that enclosure; some held him back, some tried to get him over, some inside were trying to get him in, and some pushing him out. At the time Mannhardt came in, Busch said some words, but I could not state what they were, and when he went out again, Busch cried out, "there goes the Lord God of the Germans." There was no train of men after Mannhardt when he went in to the election. All the person I saw with him was William Berg.

*George Miller.* Am a member of the congregation; had conversation with George Witman; asked me what I thought of the church affairs. I answered I did

not think much of it for my share. He asked me "whether I did not think it would be a good thing to have English preaching in our churches," I answered I did not; asked whether I had any children, and so on—I told him yes, I had, but it was no reason we should have English preaching so long as I could give them sufficient German education to understand the preaching. German is used in my family. He made several remarks which hurted my feelings a good deal; he said "that in the course of little time, they would have the power, majority, in their hands; they would have English preaching whether I agreed to it or no;" he said, "when they would get the power they would not show us no mercy at all, that we must all soon expect it, especially you, who are on the ground belonging to the congregation" (I have a lease of ground belonging to the congregation and live on it). I need not expect I could live there any longer after they would get the majority on their side. I have attended all meetings that were held in the city, at the school house of the German party. They were always orderly; they began with prayer and singing likewise. Was not at the meetings in the Northern Liberties or in Plumb street. It was the first meeting in Cherry street of the English party. There was no improper noise. Mr. Keemle got up and there was some mistake he made, which made them all laugh; did not stay till they did close.

Was at the election; saw Uhler have a man by the collar, and make motions with his fist.

It was the time the flying lions were about, as Uhler said. It must have been two or three o'clock. Mr. Riley and Vanderslice had some words together, and Vanderslice took Riley by the collar and drew him out of doors. Bohle said, "constables had no business there to disturb the members; how it exactly begun I cannot state. Mr. Uhler was close by and spoke his mind; do not know exactly what he said. As Vanderslice dragged Riley out of doors all the people in the school house nearly, followed him. In the meantime, Riley and the constable went out of doors, I see Uhler having this man by the collar. I could not positively say whether it was Mr. Bohle he had by the collar or not. I jumped behind Uhler, seized him by the shoulder and turned him round, and asked him whether the man had struck him. Uhler said, "no, he did not strike me," then I asked him whether he struck the man, he replied, no; then I told him it was not proper to go in the school house as he did, raising up his fist, I thought we had noise enough by the constable taking off this man, without his making more; told him I could not wish nothing else but to have peace; he told me "he did not want more than peace himself." I answered him I did not think it was the proper way to preserve peace. Saw Mr. Spiess; saw the wound about the eye; his face was all bloody; they took him in the school house and washed him with vinegar. In the evening, some time after dark, saw Mr. Hoffman and Mills the constable come in. Mr. Hoffman stopped at one, I be-

lieve it was Mr. Reisch, and put his hands on his shoulder, says he, "this is your man." The constable took him, and dragged him into the street; a great many people followed him; they were anxious to know what he was going to do with him. Had not observed Reisch do anything improper.

*Joseph Spiess.* Am a member of the congregation; attended the last election; was appointed by the congregation one of the committee to keep order and serve tickets. After I went into the school house in Cherry street Mr. Cope went out. Heard him say, "look all such young snots noses was there." I told him in German, when people was young every one grows to his age. Mr. Cope told me, "you must not talk that way with me." I told him very well. I am about forty-six. I went backward and forward and served tickets. Mr. Long came on the pavement, he said to me, "Spiess, which side do you vote?" I told him I did not understand English, I must keep to that side I swore to support, when a soldier swears to his colors I must stick to it. Mr. Long said, "we should keep peaceable, and must not be angry at anybody." Saw a disturbance in the school house by the people. I can't say how many together. I went to look after it; thought it was my business; saw them bringing out a young man named Riley. I saw a man had him by the collar; tore it half way down; it was Vanderslice. I got out to keep them apart. I put my hand on his shoulder, I told him, my friend, do not do so, be honest, keep in order and you will do

very well. He turned round and he struck me under the eye; it was my open hand I put on his shoulder. Knew his father very well. I was a milk man and served him in Fifth street; the young man had seen me there frequently. As quick as he gave me the stroke he says, "you hold me, and the word and the stroke were so quick as can be, before I could give answer. I say very well, what do you do that for to me, and then I went off. I could not see out of my eye, the blood flowed down here, I could show the blood on my jacket now.

*Cross-examined.* Went to the mayor and I told him how I got abused. Mr. Cope and Mr. Ripberger came in, and Mr. Cope run the Germans down, as it was most a shame to tell. He said, "The Germans going on so, down there at the school house, it was just like a bull bait; this man Schroeder said, "no, it was not so, they begun together, the one got half and the other got half." Mr. Cope said, "our party cannot get a vote in," some opposed him, Cope said, "this man was the worst of the whole, and that he belonged only a few years to the congregation. I told Mr. Cope he could not prove that, I could show receipt for rent for five years in Spring Garden, it would make now I guess nine years. This all took place before the mayor; he said, "he would laugh at me if the constable knocked me down like a log. The mayor said to me, "if you want anything you must come on Monday. Monday I went not out of the house; was ashamed to go out of the house, people would think I was a great fighter, and looked so

scandalous. Friday I went to the mayor's office; told the mayor about it, Vanderslice swore I had hold of him, and he had to give me a blow to get shut of me. Mr. Wharton says, "better make up together," Vanderslice would not make up.

*Cross-examined.* Took an oath I would stick to the German language as long as God gave me life. I know it well enough, but I cannot express it in English. I thought with myself when anybody swore to his congregation, or a soldier to his color, he ought to stick to it. I guess it was in 1807 I paid my first pew money. I cannot recollect exactly when I took it. Went to Mr. Schmidt's; he asked me, "I suppose you know what is right and wrong?" I said I knew it very well. Next time I took the sacrament. Mr. Schmidt gave me a book what Martin Luther suffered for his religion; and afterwards I took sacrament in that church. I read that book. I can read printing, not writing.

*Jacob Riley.* Am a member of the German congregation between four and five years. Have attended the meetings before the election. It was conducted orderly; began with singing and praying. It was the flippenny-bit society. On the day of election, went there about nine; heard a great noise. I saw them when I went in, pulling in and out; Godfrey Seeler took hold of a man by the foot, and his hat fell off. Steiff took a spring and knocked him down; there was a high stove in the middle of the school house. Saw his name on the ticket on the English side for church warden. He

came and run to knock Schwicke down and threw the stove over. There were several old men. I saw them taking up the fire and throwing it in the snow, with that I walked out. Schwicke took his hat and walked away; he said he would not have anything more to do with it. Went over to the other school house about eleven. I came into the school house again; was told a man named Loos pulled a piece of paper out of Witman's hand; saw a great crowd cry out, "find him out;" saw Vanderslice. I put the broad of my hand on him, said I, Vanderslice, what is the matter; he turned round very hasty as he is, says he, "Riley are you going to prevent me from taking this Loos; he took me by the coat and tore it, pulled me from the school house to the porch and Jacob Lex took hold of me.

They dragged me out and got me as far as the porch; on the porch I put my hand round, and tore my wrist by a nail. I hallooed, let me alone, let me alone; I have got as much right as you have. I was pushed by Vanderslice into the snow. Jacob Lex stood by; they hallooed, pull him away, and got up again and wiped my face. When I fell in the snow saw Spiess went to prevent me from being taken off, he received a blow; they left me there, and Spiess and Vanderslice had a word together; saw the blood on Spiess' cheek; afterwards Vanderslice called me on one side, and Weckerle said to him, "are you not ashamed to strike this man in this manner, a little more and you might have killed him." Vanderslice said to me, "Riley, I am very

sorry," and the tears come in his eyes; the German side wanted me to sue him; told them I never had any sueing, or anything to do with law, and I did not wish it; we have always been good friends. I went to the school house, and had my wrist washed. I walked over to the school house door, saw Andrew Busch. Heard him say, "here comes the Dutch, their captain." After he had given in his vote and was going out, he says, "here comes the Dutch, their Lord God," in German. Had a cigar and went to the merino to light it, there was one of the name of Eberle, Charles Bloomer and one Dannacker, and five or six young lads, confirmed at the same time I was, they were on the English side, says Dannacker to me, "Riley, why you Riley, you bugger you do not vote the English ticket;" says I. I voted the one I liked; says he, "if your brother had been confirmed, he would have voted the English ticket;" says I, my brother may do as he likes, I will do as I like. My heart never thought to injure Mr. Vanderslice, more than a child two years old; he had been on a good footing with me; he told me he was ordered there by Mr. Geyer to keep peace.

*Cross-examined.* As to beer there that day, I saw one barrel was full, and one empty. Was one of the committee of vigilance.

*Christian F. Tackman.* Am one of the congregation; was at the general election; saw Vanderslice strike Spiess; saw no disturbance in the house; the election was carried on as usual; always attend the election, and

the appointment of the inspectors was by the president of the corporation.

*Henry Lehr.* Was one of the inspectors at the election. Mr. Witman jumped on a chair and held a piece of paper. He said, "the congregation was to appoint the inspectors, agreeable to the advice of the attorney general; he had his back towards me; he called the voices; there was no decision to my knowledge given on either side; some called yes, some no; then Honey stated who the inspectors were. Was first informed I was to be an inspector of election about two days before. I rather excused myself. Mr. Witman appointed Wagner and Long; Mr. Long was in the enclosure, Wagner I did not see. Witman raised himself alongside of my elbow, pretended to examine as well as I; I told him several times, Mr. Witman, you better step back, you are in my way now. There was a hallooing at the same time. Witman would still insist to stand there; I got a little angry, said I, you see all this disturbance is because you are so near, the people want you away; he would not go away; the people was always hallooing to try to get him away; then Hoeckley took the ink stand away from him, and he had to go back and sit afterwards at the table.

I had some conversation with him about the English preaching. Geyer and Witman came to my house and asked what I thought of it; I told them I did not think any harm of it, but stated, the German ought to be still preserved. Would keep myself on the neutral side; had nothing to give away, but if the

members of the congregation had no objection, I had none, if it could be done in a Christian-like manner.

Asked me about this noise, whether I did not think it would be settled. Told him, yes, I would be for making up, of course. Says he, "We would be for making up, if it could be done." I believe I made mention, "Do you want the church or anything?" "No," he said, "We do not want anything." "Why," says I, "then it can be made up." I could not give much advice; I was sued myself and did not like to say much. He said, "People do not like to say much." "Why," said I, "it is no wonder; if people say anything, there is harm made of it; they are bound over," etc. Had a conversation at the house of Eberle. Long came there; something was said about making up. Eberle said they had an advice from the ministers and synod they should make it up, it would be the best way to do, if it could be settled. "Well," said I, "the best way is—you have taken it to court, you can take it away again; you can take the suits out of court." Recollect the time

Mannhardt gave his vote. Someone said, "There is Mannhardt, give him a little room." Did not see him the whole day before nor after.

*Cross-examined.* The English and Germans came and voted; the Germans were larger. The eagles were on the German. About eight or nine years ago there was an opinion brought in by Mr. Graeff, and the high judge or the attorney general said they should elect the inspectors by the congregation; but at the same time they did not mind it, they went on. Mr. Woelper was president; he appointed the inspectors, and afterwards it was always done so.

*John K. Helmuth.* John Long desired that the dispute should be settled, and wished that my father should use his influence to have it settled, if possible. He did not exactly state the terms; he said that some of the leading men of each party should meet together with a view of having it settled; he did not exactly state what the cause of the difference was. Am acquainted with Mr. Mannhardt; he is a man of good character and conduct.

### July 16.

*Henry Schraeder.* Have been at the meetings of the German society. There was nothing out of the way. Heard Mannhardt say they should be peaceable, quiet, not have any fighting or any disturbance. Was at the election. When I came in there I saw the stove lying down. There was one gentleman standing up on the inside where they were giving in votes, he had a book in his hand taking down the names;

heard some people call out he should come out; he continued there; some cried out, "Take the book from him," and some went and took the book from him; the people told him to set down at the table with the rest, that the people might have a chance of giving in their votes. The election went on peaceably. I saw a crowd of people on the pavement near the church; Vander-slice was among them. Spiess

clapped his hand upon his shoulder and said, "Vanderslice, you had better leave that man alone." Vanderslice, upon that, turned around and struck the man with a little club in his face. I told him he better come away and leave them fight it out themselves. He went in with me in the school house.

*John Kohler.* Am a member of the Lutheran corporation and have attended the meetings of the society previous to the election. Went to one in the Northern Liberties; they were singing; Mannhardt said prayer. Busch sat himself alongside of me; says he in German, as well as I can explain myself, "Have you got such an ornery fellow for a president?" Mr. Eberle was president. There was something read off about having English preaching in our church; Mannhardt read it. Busch said, "It is a lie" (in German); it caused a little noise. The president said, "Who made such a noise?" Miller, who sat before him, says, "It is Busch. I thought he could not understand German, he could not understand but English." Says Mannhardt, "Be quiet; I am very glad to see Mr. Busch come into our society, to see and hear what we are doing, what is going on." He was quiet afterwards.

*Charles Kileg.* I was at the election. When Mannhardt came Busch said, "Here is the captain general" (in German); heard nobody else say so; after Mannhardt was going away, he said, "There is the lord god of the Germans," very loud. Am a Saxe; have been one year here.

*George Miller.* Was a clerk at the election in January last. Heard Mr. Honey nominate the

inspectors. Saw Mr. Witman jump on a chair and proclaim something; what he said I could not understand; it created a disturbance which lasted about a minute; afterwards the election went on regularly. Remember Mannhardt's coming to vote. When he came in at the door some gentleman—I could not see him—called out, "Make room, Mannhardt comes." Heard another voice say, "Their captain general." Mannhardt came to the enclosure and gave his vote and went out again; after he went to the door I heard another voice say, "It is the god of the Germans." The stand Witman took incommoded the inspectors; heard them very much complain about it and request Witman to go away.

*Henry C. Hyle.* Am a member of the German Lutheran congregation; did not vote at the last election. Heard Godfrey Cope frequently halloo about the bloody German petition; more than 100 times he has said it; every day since the election it has been the conversation in market. Before the grand jury found a bill of indictment against these men, he said they would try all possible means in their power to make out this petition conspiracy; if they could bring it in conspiracy, it would be in their power to put every man of them in the workhouse seven years, more or less, "and then we will see whether we will have a church to ourselves or not." We said no more about it. Cope always said he wished for English preaching. He remarked that no respectable man would attempt to uphold the German language any longer, only such as wood sawyers, scav-



engers, and such like; that no decent man would be seen in their company, much more in church. He said, "Mr. Conrad Weckerle must have a good deal of money to spare to uphold the Germans' cause." Heard a conversation with Busch and Cope in the market; Busch said, "There is one article will go against us hard, Witman knows an article of the by-law which authorized the president to appoint inspectors which will make it appear that Witman was the beginning of the disturbance."

*George Houser.* Am a member of the congregation; was a member of the corporation in 1804. There were some very ridiculous tickets put in, in 1805; the congregation would not receive them; they were scandalous; people were put on that were very improper to put on. There was a ticket came there with Poll Bell's name on; there were a great number wrote their own tickets and in a very ridiculous manner. At the last election there were many tickets put in by many people that were not members of the congregation. It was ridiculous; never saw such a going on in religion in my life; both parties

were violent and ready to knock one another down. (Pointing to Mr. Witman.) Here is a gentleman who made as much noise as any; he jumped over the banister and kept a little memorandum book of the votes that were given in. Cope was a little violent; he said a great many Dutchmen were coming in to take their rights from them."

*Smith Mills.* On the morning of the election I attended at Geyer's office and he told me to go there as an officer. I received a blow from some person; do not know who. Was sitting on the window seat and broke a pane of glass accidentally; another officer was speaking with me; some person came up to me, thought he was an overseer, and talked to me in German, did not understand him; some person behind me told me he was abusing me; told him if he spoke to me in English I would answer him; he struck me and knocked me off my seat; I collared him immediately and was going to take him out to a magistrate, but the crowd pressed around and took him from us. I received another blow from I do not know whom.

#### July 17.

*Francis Varrin.* The words denoting "body and life" are used on solemn occasions to imply an earnestness and force, without a criminal intention. This idiom not to be confounded with the other German idiom, to be for a thing by death inclined; there is a great difference between these words. It is an expression of the attachment, inclination for a thing; the words "body and life" are used in some prayers. Had

I seen that paper, without having any knowledge of the dispute, as a literary man to give the meaning, to translate it as not applicable to any dispute here, to transfuse the spirit of these words in the English language, I would translate them as I said before. It shows their attachment and love to a thing; these words are used by the most sincere friends to each other in parting; the bride and bride-

groom use these expressions towards each other. Would not understand them as conveying a threat. These words are used in hymns, in all kinds of familiar speech and never in a bad sense.

*Cross-examined.* Have not a German library; have a small selection of books, but have no money to buy many. I read a great deal. If a man should say to another, "I will take your horse from you," and the other should say, "You shall not; I will defend him, mit Leib und Leben" he means that the horse is dear to him, infinitely—"as dear as my eyes, as dear as my life; I can not let you have it." If he say, "anf Tod und Leben," then he might mean he would defend it with violence.

*Re-examined.* In a remonstrance addressed to an incorporated body, "We will support you mit Leib und Leben," I would understand in a lawful sense.

The *Attorney General*. Do not all dictionaries give the correspondent idioms of the languages into which they are translated? Yes. Is it not the practice of all authors, if, when they translate from German into French, they give the French idioms, do they not, on the other hand, when they translate into German from the French, give the same idiom? Yes; but they keep the French idea. Here is a German publishing a dictionary, and he gives to the German and French, will he not give the French expression correspondent with the German idiom? Yes, sir; but he gives the French idiom. What sort of dictionary do you put in the hands of your scholars? Muhlenberg's dictionary, which is adapted to teach

the German language. Does the word "mit" make any difference from "by"? It is much more innocent than "by"; it is quite innocent, "mit."

*Dr. Helmuth.* The literal translation should be "with body and life." There are two sorts of expression; the one is by adding the preposition, "bey Leib und Leben"; the other "mit Leib und Leben," as it is here; "bey Leib und Leben" refers to the person who is spoken to, and implies a sort of threat, but a threat that a mother to her children will give, who will say, "Do not do that, by body nor life." Sometimes the word "body" is used alone; sometimes both the words; the threat refers to the children, "You will suffer for it if you do it." "Mit Leib und Leben" is an expression that refers to him that makes it, to the person speaking; if there is a threat in it, it falls upon him that speaks. Some of the Germans look upon themselves as a persecuted church, an ecclesia pressa; they are afraid if the English language be introduced the German language would very soon be extinguished; and to prevent this they will defend it with body and life; they rather will lose their bodies and lives; they look upon it in a religious light. It is a common phrase used in hymns and prayers. For example, from the hymn book: "Let it cost body or life, goods, blood, all what you have; let not that make you uneasy, Jesus will give it back to thee again when that great day appears; He is thy confidence and trust."

*Cross-examined.* There was German and English preaching at the foundation of Zion church. Have not heard English preach-

ing in Zion church. Before this dispute arose about English preaching, Mr. Muhlenberg preached an English sermon there; do not remember any English preaching since. Do not remember advising some of the members favorable to the English preaching not to meet, in consequence of the large number in opposition to it.

*Dr. Colin.* I would translate the same paragraph which has been translated by Varrin. "We will support you with our bodies and lives," literally; but in English it is "with our life"; there is no occasion of mentioning "bodies," because if we mention bodies, our lives would go, of course. It is the very same as the strong animated expressions which we often find in political bodies, in parliament, or in our congress; it signifies this, that we will defend our good cause with our life if it be necessary. It is an expression very general among all people, religious and political; it signifies that they would if necessary support their opinion, the good cause, or that they think good, with their bodies and lives; If a persecution would happen, they would suffer anything, they would defend it with their lives. I can not tell exactly what they meant, but in their zeal, it is that they would defend it with their lives; that is, a defense in case they should be called upon; a general expression it is of what they would suffer and do. It is a common phrase used among the Germans to signify sincerity and resolution; it admits an innocent and lawful sense, because it may happen that they shall be called upon to defend their religion, their rights, they may be

very mild, but willing to fight if necessary. (Reads third paragraph of petition.) "We declare shortly or briefly, by this opportunity, and we declare to an experienced corporation, that we are resolved, and we do now before God solemnly say that we are resolved, with our lives to defend our divine worship, as we solemnly covenant with each other before God, to defend with our lives our German divine worship against all aggressions and with all our powers to oppose the introduction of any foreign language in our temples." I do not attach any meaning to the words in that paragraph different from that of the other. I can't, for my part, say they intended violence; this paper did not pledge them to any unlawful enterprise.

*JUDGE YEATES.* I understand you that the words in themselves may admit of a fair interpretation; that it does not pledge them to an unlawful enterprise. But may it not be taken that they would defend themselves with violence? Yes, it may be taken in that sense. May they not be fairly construed to imply that at all hazards they would defend their system? It may admit of that meaning, but my meaning is this, that by a strong assertion they say they would defend their worship with their lives; but I can not say they would act with violence or go to fight; I could not with a fair conscience say they intended any violence at all. According to your ideas of the idiom of the German language, are not the words there susceptible of a fair construction, that at all hazards they would carry their system into execution?

Yes, that they would venture their lives; it does not say in what particular case they would do it; it has been remarked that in America, by Europeans, they are accustomed to use strong language in their public addresses; that is, strong animated language. Dr. Wrangle, a very popular man, but had his humors, it happened one time a part of the congregation disagreed; he was called home and very highly promoted. He showed a petition—I saw myself—in which they extolled him very highly, and they said they would defend him with their life and blood."

*Cross-examined.* Was educated at Upsal, a university in Sweden. In Sweden the German language has been long cultivated, and it was customary when I was a boy for young gentlemen to learn the language; it was customary for our mechanics to travel about. I was 8 years old when I first read the German language. It is so near my own language, I could read it before I was grown up, in prose; have about 300 volumes of German books in my library.

*Adam G. Harris.* At a meeting at the vestry, after the petitions were read, a dispute arose between the members to reject it; the question was taken and was carried that this petition should be acted upon; there were three or four of the gentlemen spoke all at once, so that one confused the other. I told the president it was quite improper to have such a confusion in the corporation, it was out of order; he answered I should put them to order; I then told him he was

president of the corporation, it was a thing did not belong to me. Then Mr. Yaeger stated, by speaking through one another a person could hardly make out who was telling his story—Yaeger said that some of them had been going about to persuade the members to join them to get English preaching. Mr. Dreer said, "They may thank God, they saved their lives in the school house." I told Dreer that he must possess a great power to do so; Mr. Dreer replied that he could not do it, but there was enough would have done it if they had not been prevented. I told Dreer I did not think he was a competent member to belong to such a body, to come there and make a riot. Dr. Helmuth got hold of my hand to make me make up with Dreer, but I did not think the thing of consequence then.

*John Birnbaum.* The latter end of September the vestry met; I was a member of the vestry; two petitions went in, one from a party to introduce English preaching, the other not; a little dispute took place, one was speaking here and one there; Dreer was sitting alongside Mr. Harris and I was near Harris; Dreer said we might thank God we had saved our lives in the school house; Mr. Harris told him he must be a very powerful man; Dreer answered he would not do it, there was enough beside him that could do it; Mr. Geyer, a member of the corporation, said to Dreer it would be his duty to inform of such people; could not say what answer Dreer gave to Mr. Geyer.

## MR. BINNEY, FOR THE PROSECUTION.

*Mr. Binney.* Gentlemen of the jury: It has been repeatedly insinuated that this prosecution owes its birth to personal resentment, and to the desire of wresting from the Germans a portion of their property by the terror of the law. Gentlemen, the prosecutors indignantly deny it. Personal hostility to the defendants they have none. Most of the defendants are volunteers in the cause; they have importunately pushed themselves into the bar, that they might participate in the triumph of victory. The prosecutors cannot be charged with resentment against this portion of the defendants. As to the residue, they are arraigned before the public, not because they have refused the benefit of religious instruction to the prosecutors and their children, great as this outrage is, but because they have combined to interrupt the enjoyment of private opinion, and to support their own absurd prejudices by menaces, by assaults, and by violence. They well know, gentlemen, that the influence of reason, of mild and brotherly counsel, must sooner or later be fatal to their fanatical proscription of the English language in their churches; they determined therefore to drown the voice of reason in their tumult, to proscribe all the charities of brother and of friend in the contest, and to gain by combination a momentum in their career that nothing could resist. They not only used force and violence, but they combined and conspired to use any degree of it that should be necessary to exclude the English from their churches, however just or general the wish for instruction in that language might be. This is their offense, and it is to restore the prosecutors to the right of private opinion and to the right of peaceably advocating and propagating their opinions in the church, that they have instituted the prosecution. It is to gain no new advantage; it is to punish aggression upon a long established and unquestionable right.

The indictment, gentlemen, contains two charges or counts: the first states the conspiracy as it is recorded in the Ger-

man paper, and that in pursuance of such conspiracy the defendants committed the various assaults, batteries and riots, which attended the election. The second charges the conspiracy only: whether the defendants were or were not parties in the election riot, and whether that riot was or was not a fruit of the conspiracy, still if they combined and conspired as is stated in the second count, they are guilty. Conspiracy, as you will perceive, is an indictable offense though it be followed by no overt act. If the conspiracy produced the riot, they are guilty upon both counts, and the court in their sentence will notice this aggravation of the offense.

The law, gentlemen, looks with peculiar ill will at the offense of which the defendants are indicted. It is an offense so inveterately proscribed that the will is considered quite as bad as the deed. While man remains opposed to man, opinion to opinion, there is too little in the excess of power of one over the other to render oppression or persecution probable. The law considers the community safe, if it punishes merely the excesses themselves, the acts. But when bodies of men combine to carry into effect their designs, the moral influence of combination is such that it frequently achieves its designs without acting. The law therefore in every case where the combination is calculated to prejudice the rights or interests of third persons, punishes the conspiracy itself. This was the law as it was held by one of the present counsel of the defendants, while recorder of the city, in the case of the journeymen shoemakers, where a number of men were indicted and punished for combining to raise their wages. Upon the same principle the brewers of London were indicted and convicted for combining not to brew small beer. In each case the conspiracy or combination was held to be the offense, without reference to any overt act.

I lay it then down to you gentlemen, as the only principle of law which it will be necessary for you to advert to in reference to this indictment, that all combinations to carry into effect an unlawful design, or even a lawful design by unlawful means, are indictable without any overt act whatever;

and there probably has never been a country in which law had the semblance of science, where this doctrine was not espoused as essential to the public peace.

Where conspiracy or confederacy is proved, the acts and declarations of any member in reference to its objects and operations are evidence against the whole body; so that if after proving a combination among the defendants, there should remain any doubt as to their precise object, we shall be entitled to urge against all, the language and the acts of any one conspirator, and to call upon you to say, that the object was in truth and reality what this language and conduct show it was.

Thus stands the law, gentlemen; its application to the facts constitutes the business of the case; and although the case is unusually full, and the witnesses at times in apparent contradiction with each other, I trust the prosecution will have no difficulty in so making the application as clearly to prove the guilt of the defendants.

Permit me, gentlemen of the jury, to give you a brief history of the churches which have been the scene of this disgraceful schism—you will the better understand the nature and the merits of this conspiracy.

Prior to the year 1765, a number of respectable men, some of them natives of Germany, and others, natives of this country, the descendants of Germans, united to erect a building for public worship, in conformity with the doctrines of the Great Reformer. The fruit of their union was a building still extant among us, remarkable for its venerable and antiquated structure. In this church they preached the German language, not in consequence of any article of religious faith, or of any private agreement among them, but as a matter of present convenience and expediency. To many this language was vernacular, it was understood by all. Having increased in number and respectability, they addressed themselves in 1765 to the proprietaries of Pennsylvania for an act of incorporation; and they were accordingly incorporated with liberty to build another church. The church now called

Zion's, was erected under this charter, and in these two churches, the society continued for several years to flourish. Toward the close of the revolutionary war this body again addressed itself to the notice of government, to obtain a confirmation of its corporate privileges; and in the year 1780, the commonwealth renewed and amended their charter, and gave them the liberty of erecting a third church. This liberty was no doubt solicited and granted in consequence of the increase of the church; and there is no difficulty in crediting such an increase even under the impediment of a foreign language, when we advert to the fact, that at that day the founders of the church, natives of Germany, still continued to mix with their descendants in attendance upon its ordinances. The language was still known to all the members. But the history of this last privilege, is the history of the decay of this church, and of the cause that produced it. A congregation as respectable for its wealth as the German Lutherans, as stationary as that body of men has generally been in this city, would by its natural increase alone, unaided by emigrations from Germany, have called for the erection of a third church, had not some pestilent influence kept down its growth, or compelled it into some other direction. A third church was never built nor called for. For some time the cause was not perceived. By many even the effect was overlooked, and the few by whom it was noticed referred it, not to its true cause, but to that occasional decay of religion which is seen in every church, and which in most churches is effectually compensated by occasional revivals. To the German Lutherans came no such compensation. The body contained within itself the seeds of incurable decay; the sources of nourishment were dried up; the word of God was preached in an unknown tongue; "the hungry flock looked up, but were not fed." In the year 1800 the evil addressed itself irresistibly to the conscience of almost every father and mother in the church. A period of thirty-five years had elapsed since the first charter. Those who had obtained that charter, had now dropped into the grave, their children had become parents;



the language of the country had made inroads into every family among them; it was impossible to exclude it, and as impossible to prevent it from excluding the German. The children of the congregation therefore deserted the church; no other was open to them. The descendants of the founders grew up in ignorance of their duty, through the very influence of that church that was erected to teach it to them; and the church confined its instructions to foreigners, emigrants from Germany, who had been but a day among us, and who by obstinately maintaining the German language in the pulpit, drove the Americans from the church, or compelled them to yield a hypocritical attention to what they could not understand.

I ask you, gentlemen, whether here was not ample cause for the fermentation which commenced in that church in 1800, and continued to the separation in 1807. The evil was not to be endured. With every conscientious man among them it was a question of life or death. They were themselves partly uninstructed, their children wholly so. Two churches belonged to the congregation, and its affluence could easily have afforded a third. The friends of the German language could not fill one. Their brethren asked that one of the churches might be assigned to them; it was refused; that there might be services in both churches alternately in German and in English; it was refused; that they might have assistance from the corporate funds to build a church for themselves; it was refused. They were reviled, slandered, persecuted. Their views were pronounced to be venal, not religious—they wanted, it was said, not instruction but money; nor did this base outcry cease until they finally gave the lie to their accusers, and followed the direction of their conscience, by erecting with their own unaided means the church now called St. Johns.

This secession in 1807 carried from St. Michael's and Zion's churches a large majority of those who wished for instruction in English. To those who remained behind, and who were not bigotedly devoted to German, the evil of German preaching either did not appear, or was not, so alarming. It had not yet arrived to its greatest pressure in their particular case; they

were willing to give it a further experiment, and they gave it without prejudice or animosity. The event of this prosecution shows in what the experiment has resulted; it shows beyond all question that the exclusion of the English language from that church is so irrational, so irreligious, so fatal to the well-being and harmony of that society that nothing but menaces of force and violence can bring it about; that nothing but conspiracy can bind the enemies of this language together, and that if reason is left to her own proper and legitimate influence, the overthrow of this abominable fanaticism is inevitable.

Let me now state to those Germans, who are listening to this brief history of their society, what this history has made prophecy for all future times, that with the revolution of every fifteen or twenty years, so long as this bigoted exclusion of the English service shall endure, those who at the beginning are the enemies of English, will at the end of the period become its repentant friends. I ask those who know the nature of man, is it possible in the centre of an American community to rear children to the use and perfect understanding of the German language. Instances there may be, the diligence of some parents may do much, and the docility of some children may do more; but I speak of children in general. There is no doubt it cannot be. How then are Zion's and St. Michael's to be recruited? How is the church to be maintained in even its original strength? Not by streams from the native fountain, the well of pure and refreshing waters, but by the turbid current that is rolled to this country by the discontents and restlessness of Europe. The Church must depend upon emigration. The emigrant must supplant the native; and when he has been long enough in the country to rear an American family, that family must be rejected by the church to make room for a fresh importation of strangers and aliens. What the cause of the prosecutors is today, will therefore twenty years hence be the cause of these defendants; their cause against some more recent swarms of emigrants, who, after experience has operated upon parental affection to turn these defendants from the error of their opinion, will conspire

to rivet upon their children the same pernicious rule, which they have conspired to rivet upon the prosecutors. This course is so natural, so certain, and yet so abhorrent to the feelings of every one, that if no other consideration could lead to the occasional use of the English language, in the churches, this would do it. Reason has nothing to offer against it: reason could never prevail against it—it was therefore necessary for the defendants to resort, not to reason, but to menaces and violence.

Gentlemen of the jury, it has been said that it is an article of faith with these people to adhere exclusively to the German, in their religious exercises; that they are conscientiously opposed to the English language. It is dishonoring conscience to attribute to her any agency in this absurd and senseless prejudice. Is religion in any instance, or with any sect, identified with language? Will these people say, that the author of this religion, when he commanded his apostles, "go teach all nations," give countenance to their opinion? Can they look for justification to a religion, whose most splendid miracle was the gift of tongues? Can they find any support in the practice or sentiments of Luther, who availed himself of the universal Latin language to propagate a reformation for which his own German idiom was too narrow? Is there any help for them in the confession of Augsburg? Gentlemen, this cant, about faith and conscience in a practice that seems to trample upon both, gives a deeper tinge to the offense that it seeks to palliate.

Further, it is said that they are by their fundamental articles, by their charters, by all their church records, a German *Lutheran* congregation, and that they have no authority to tolerate another language. This argument, his Honor will inform you, if necessary, proves far too much, and therefore proves nothing. It proves that this church against the unanimous wish of its members is bound to retain the German, that it is a condition upon which they hold their franchise, and that if the time shall come when not a vestige of the German language remains among the people, they must forfeit their

charter, or employ that language in the church. This is indeed going too far. The fact is, gentlemen, that you never meet this phrase in the charter or elsewhere except as the description of the body, the name and title of the corporation; it in no respect restricts them as to the language of their church, nor even as to the descent of their members—they may be descendants of Frenchmen as well as of Germans. The precise point has been decided by the supreme court in a case perfectly analogous. A Roman church of this city is incorporated by the name of the “Religious society of German Roman Catholics of the church called the Holy Trinity.” The enacting clause repeats the title, and confers the privileges of a corporation. The officers of a church election in one instance rejected the votes of all but Germans and the descendants of Germans, and in consequence, particular candidates were returned as duly elected; whereas the votes of Americans, and of Frenchman, in other respects duly qualified, would have turned the election the other way. The court after argument, made the rule absolute for an information against the officers who were returned as elected, holding it too clear for a moment’s doubt, that the word German was part of the title of the corporation, and not of the qualification of the members.

There being then gentlemen, neither faith, nor reason, nor law against the use of English in these churches, the friends of it in the autumn of 1815, thought proper to confer with each other at a public meeting. The congregation is proprietor of two school rooms, in one of which the friends of German usually met to promote their views. In the use of this they were left undisturbed, and that the friends of English might be equally so, they convened in the other. The object of the meeting was known to Mr. Fricke and Mr. Hoeckley, two of the defendants, who with others of their party were invited to attend. It was stated also to Dr. Helmuth, their clergyman. No opposition was made to it, and none rationally could be. A form of notice was devised and printed to invite the attendance of the candid and intelligent men of the church. The meeting took effect and notwithstanding the disturbance ex-

cited at it, a committee was appointed who stated their wishes in a letter to the vestry. This letter is the head and front of our offending; Nothing else has been done by the friends of English preaching; and therefore I beg your particular attention to it, that you may hereafter compare it with a different paper from a different body. (See *ante* p. 805.)

I ask you gentlemen with perfect confidence, whether it was possible to pen a letter more conciliatory, more peaceful, more perfectly in unison with the religious professions of these people; there can be one answer. On the other hand what was the course pursued by the defendants? It was said until the evidence triumphantly put down the assertion, that the prosecutors were the aggressors, and that the steps taken by the defendants were intended only to meet what was thus begun by the prosecutors. It now appears that before the meeting was called at which the committee was appointed to draft that letter, these defendants knowing that a meeting was in agitation, determined to prevent its influence by the combinations for which they are indicted. They held a previous meeting; they there entered into their solemn league and covenant; they recruited their forces, and on the evening on which the peaceful communication of the prosecutors was presented to the vestry, the address of their opponents with its numerous signatures was found already in possession of the table. The object was to meet the first step of the prosecutors by menaces of violence, and by the same means to deter the vestry from yielding the slightest attention to the petition that was proffered to them. The defendants had bound themselves to each other to prevent even by the sacrifice of life, the introduction of English into their churches, and they boldly proclaimed their conspiracy in order, that the sacrifice might be made unnecessary by the threat. Now gentlemen, let me call your attention to the German paper. (See *ante* p. 803.)

I defy any plain unlettered man to read that paper and to hesitate a moment about its meaning. The covenanters announce to the vestry, "that they had determined and firmly bound themselves before God, and solemnly to each other, to

defend with their bodies and lives their German divine worship from every attack, and to oppose with all their power the introduction of a strange language into their churches." They pray that the question as to English preaching may never be put to vote, that English may not be spoken in the vestry room, that the friends of English may not be permitted to meet in the school room, and they concluded by declaring that they will with all their powers, yea, with body and life, support the corporation in all such measures as may tend to the welfare, advancement and perfecting of the German divine worship.

Try this paper by any rule of criticism that will not outrage common sense, and it will be found to be neither more nor less than a covenant to prevent English by force and violence, or in the language of the indictment by all means lawful and unlawful. It declares with the utmost emphasis, that they have combined to prevent it, and by the plainest inference to prevent even a vote upon it, by their bodies and lives; and among plain men these plain words have no other meaning than resistance to death against the introduction of English, even through the medium of a legitimate election.

But this simple and obvious interpretation it seems is unsound; and one of the desperate efforts of the defense, has been to urge upon you and the court the adoption of another.

It is said that the words *Leib* and *Leben* are a figurative expression, indicating nothing but a sincere and ardent attachment. My answer is that the signers of the paper are not poets or rhetoricians, but very plain and some of them very vulgar men. I doubt whether many of them would comprehend the meaning of this part of their defense.

The principal support of this construction is Mr. Varrin, a professor of the German language, whose opinion I should be more willing to take if he was not at the same time professor of a very ardent attachment to the leading defendant. This gentleman expounds words to mean merely a sincere, kind attachment, nothing more. Being asked if to defend mit *Leib* und *Leben* means lawful defense, he answers yes, always

a lawful defense. Now it is clear that one part of his interpretation destroys the other—that if the phrase means any defense, it does not mean merely a sincere kind attachment; but it is still clearer that if it means defense it depends not upon the words, but upon the context or the object, whether it be a lawful defense; so that this good gentleman has after all been giving us his opinion of the paper, not his translation of the words.

The venerable Dr. Helmuth is also brought to sustain this fanciful interpretation and with still less effect than Mr. Varrin. He supposed the phrase *mit Leib und Leben*, to be harmless, because the threat fell upon the party who used the words, had it been *bey Leib und Leben*, it would have been worse, because the threat would have been upon the party addressed. But is it not clear that if I threaten the sacrifice of my own life before I permit a thing to be done, I mean to carry resistance to the extremity of death, against all who oppose me? But Dr. Helmuth speaks most plainly in behalf of the prosecution. He says, the Germans consider themselves as an *ecclesia pressa*, and they mean that they will rather lose their bodies and lives than their German. Was a combination, pledging them to this, lawful?

Dr. Collin speaks to the same effect. It is the amiable error of these gentlemen to suppose the defendants free from intentional fault, and then to interpret the phrase accordingly. It is the duty of the court and jury to ascertain whether they are free from intentional fault by the fair interpretation of the words as they stand.

But, gentlemen of the jury, if there be any thing ambiguous in the words of this paper, you have from the defendants an interpretation that is perfectly decisive, an interpretation by their actions and language, which from the commencement to the close of this disgraceful conspiracy, speak one unvarying purpose of violence.

Mannhardt was the author of this paper, it was presented to the vestry in his own handwriting, he of all the subscribers best knew its object, he best knew whether in its compo-

sition he had indulged the fancy of a poet, as is now imputed to him. Gentlemen, this man instead of being satisfied that his work should be diluted or emasculated as his counsel now wish it to be, declared that it meant blood and nothing but blood, and both he and his followers acted up to the full malignity of this declaration, until the consummation of their purpose at the election. It was at the meeting in the Northern Liberties, after this paper had been written, that Mannhardt told his friends they must oppose the friends of English preaching by their bodily strength. On the evening it was presented to the vestry, this same Mannhardt solicited Uhler to attend that body and declared to him that not half an inch must be given, otherwise blood must flow. As early as the spring of 1815, he had digested his plan. There were in the corporation friends to English preaching; their intention he said was to introduce it, but they "shall not succeed, those traitors. Before that happens, blood shall flow." Eberle expressed his horror at this ferocity, but the wrath of Mannhardt was not to be appeased. "Yes," was his emphatic answer, "blood flows."

This savage language of the leader became the counter-sign of his party. They were not merely imbued with his spirit, but they swore in his words. Dorneck told Busch, before English should be preached, blood should flow in the churches. Many would sacrifice their lives, and do as had been done in London, resort to open violence in the church. It was Hegler's language to Cope, "blood shall flow, before you shall have your ends answered."

It was not only by these, but by equivalent words that they showed the most distinct apprehension of the nature and objects of their covenant. It was Almendinger who with his doubled fist approached Mr. Krebs while officiating as president of a charitable society, and trembling with rage, exclaimed, "at the next election Mr. President, at the next election;" and Christian Schmidt whose presence always was the signal of disorder, supported his comrade and explained his meaning by a most felicitous reference to the scriptures.



“Mr. President, if we can’t gain the next election by fair means, we will follow the command of our Savior and smite with the sword.”

Can any one, after this language, gravely endeavor to argue away the natural meaning of this German paper? Can the counsel entertain the slightest hope of success for their interpretation, when their clients have thus as it were anticipated and rejected it?

But, gentlemen of the jury, it does not rest here. It is not merely from the lips of those men that we ascertain the character of their conspiracy. Their acts interpret still more effectually for the prosecution; and I say it with a full assurance of your assent, that from the time the covenant was made down to the day of the election, these acts were acts of violence, sometimes brutal, often subversive of the public peace, and always showing that they considered their bodies and lives as literally in pawn for the defeat of their opponents.

Need I gentlemen, recall these acts to your recollection—the determined obstruction of every meeting at which the prosecutors assembled, the malignant attack upon Burkhardt by Schmidt—the blows by which Mackie rewarded Burkhardt’s attempt at pacification, and the disgraceful outrages of the election day. It is true that Dreer, and Beeler and others, signers of the paper, but not included in the indictment, have sworn that they were present at these meetings and at this election, and that there was no disorder. As to Dreer, since the testimony of Harris, his credit is gone, he is unworthy of the least belief; and as to Beeler and the others, after the precise, minute, and corroborated evidence of riot from a score of witnesses for the commonwealth, we have no alternative but either to impute willful falsehood to Beeler and his associates, or to suppose that disorder and tumult are so much their natural element that they do not perceive it where it exists, any more than we do the air we breathe.

The counsel of the defendants will never put their case upon the denial of tumult and disorder. It is clear from the whole

current of their inquiries, that they conceive it a hopeless effort, and that they place their principal reliance upon an attempt to fix the origin of that tumult upon one or two of the prosecutors. I trust gentlemen you will think this equally desperate; and after urging a few observations to his Honor and to you upon this branch of the case, I shall leave it with you.

The allegation of the opening counsel for the defense was that the whole disturbance was the consequence of and therefore attributable to Mr. Witman's illegal motion for the appointment of judges. I deny that this was any other than a legal and constitutional motion; and whatever was its character, I equally deny that it was the cause of the disturbance.<sup>1</sup>

Gentlemen, it is unnecessary for me to pursue this subject. The defendants I submit are one and all guilty of the offenses in both counts of the indictment; and if they are so, it concerns the peace of this church and of this community, it concerns the interests of religion herself who is always wounded by the offenses of her professors, that no tenderness for the reputation of these men, no false charity for their errors shall prevent them from feeling the weight of your verdict, and the indignation of the law. I ask no other verdict than such as the evidence and the law call upon you to give.

MR. MOSES LEVY, FOR THE DEFENDANTS.

*Mr. Levy.* Gentlemen of the jury: What, gentlemen, is the controversy? Is it a question to be now decided, whether it is better for the congregation of St. Michael's and Zion's churches, that preaching and praying in English is to be tolerated rather than in German? Is this the question you are to decide? If it were, it would be connected with a multitude of facts, necessary to be elucidated by a variety of persons; the first of these are not in evidence, and it would be impertinent in us now to institute the inquiry, whether it is better for the congregation, whether it is more likely to preserve

<sup>1</sup> *Mr. Binney* here discussed where the right to elect officers in corporations was vested.

within the pales of the church the youthful members of the congregation, if English worship be tolerated there. If this were the question many of the arguments of the gentleman would have a strong and proper bearing; they would be answered by a variety of arguments on our part, and you would be capable of judging on what side the balance lay; and what the interest of religion required would be your decision.

The opposite counsel has admitted you are not to present to your minds such an inquiry. He admitted it one moment in terms, but ten minutes after, forgetting his admission, his arguments went to press and could only have application to the cause, if you were to inquire, whether it was better to have English worship in that church. For what other purpose have we been told a variety of facts respecting the seceding of the youth, than to instill into your minds a strong prejudice in favor of that side in whose behalf this prosecution is carried on? Why are we told that the congregation that built the church in 1765, were large enough to fill, before the year 1780, two churches; and yet since the year 1780, when the youth are brought up almost exclusively to the learning the English, an end is put to the increase of the congregation, and in 1780, after a period of thirty years has elapsed, no third church is built or is necessary? What is this argument for but to form in your minds a favorable prepossession in behalf of those who are favorable to English preaching? For what other purpose can it be pleaded? We are told there has been a diminution in the number of baptisms and confirmations. If there is, what has it to do with the present controversy? Is there an effort to produce from this court, such a verdict as will increase the number of baptisms and conversions in this congregation? Is this the object of inquiry or proper for your determination? We are told also of the progress of the English language, which in time, it is said, will bear down all opposition, and the German members must in a few years give way to this prevalence, which no human hand can stop. If it be so, why do not the

members of this congregation advocating the worship in English, content themselves with this steady and inevitable progress of the language which in a little time would give them the power it is the object of this prosecution to attain? If by the nature of things, if by reason of the tendency of the English language to force its way; if the circumstance of its being the language in which the business of the country is generally done, in which the laws are written; if these circumstances are to press open the door through which the English worship is to be introduced, why not calmly wait for this event which they have so much at heart? Why drag into courts of justice unnecessarily, men most respectable in private life? Why drag these heads of families into a criminal defense, who thought it their duty to maintain the German worship in these churches, if in a little time, their object could otherwise have been effected? Why were they not content with a certain victory, a bloodless victory, to which they need not contribute any thing, but which the nature of our government was slowly but certainly bringing about for them? No; instead of this, they are now attempting with a violent hand to force open that door, which their counsel asserts, will open of itself in the lapse of a few years more. This, I say, is not the object of the present controversy—totally irrelevant is it, and immaterial to us, whether the congregation is to decrease or increase by the introduction of the English worship. Your observation is confined to a single point; has there been such a combination and confederacy, by all means lawful and unlawful to effect their own views, as merits from the laws of their country punishment, and will justify you in finding a verdict against these defendants.

The effect of these observations, so warmly and eloquently pressed upon you by the gentlemen who preceded me, is likely to be dangerous unless you early resolve to trace them out, and make a determination to decide only upon those facts and those principles which tend to elucidate this confederacy and combination. Before I go farther into this subject, permit me to say, that throughout this case, every thing shows

that courts of justice, as persons who have great transactions to mind in common life, are obliged to take the words and the ideas of men, with a great deal of scrutiny and sometimes with a great deal of doubt. Sorry am I to say that on the part of the prosecution, as well as can be said of those against it, there appears to have existed great heat; and there appears throughout, great heat and animosity in the minds of the witnesses who gave their evidence.

The subject now before you, gentlemen, is one in an eminent degree calculated to excite great feeling. There is no subject that can excite more strongly the feelings of men, than any, even remotely connected with religion; and sorry am I to say, although the page of history confirms it, men in every country, in every age, have been willing to cut the throats of each other for God's sake; thinking the laws of God would justify the criminal act, because of the important objects they had to effect. In this case all the members of this congregation it is evident, or almost all of them are marshaled in parties. Any one of them may deny it as he pleases, he may say he does not belong to any, he may think so, but he does not know himself; you will find on looking at the testimony of all of them, there is not any one who has not shown he is a member of a party, and has the most ardent wishes for the success of that party.<sup>2</sup>

Let me now say, that under the circumstances of this prosecution you are to inquire whether there is preponderating evidence, that a deliberate scheme was formed by the members of the congregation, who signed that petition to the corporation, of St. Michael's and Zion's churches, to prevent the introduction of English preaching, by force and violence, by all means lawful and unlawful. This is the confederacy attributed to all those who signed this petition. And yet, if we are to believe the testimony on the part of the prosecution, when the witnesses spoke to those gentlemen who are indicted, particularly Hoekley and Fricke, they were not at all solicitous whether the English should be introduced, or the Gen-

<sup>2</sup> *Mr. Levy* here reviewed the statements of the witnesses as to this.

man continued. The prosecutors then have given instances where those to whom this confederacy has been attributed, confessed, they had no desire upon this subject. Monstrous is it then to suppose that men who have thus acted, and who are most respectable in private life should have entered into a scheme to put down by all means, lawful or unlawful, the preaching of the English language in their churches. Impossible the charge appears therefore, in the first blush of our inquiry; we will now examine the evidence in support of it.

Confederacy and conspiracy are the agreements of individuals, in the first instance originating with themselves, and communicated to each other. When communicated to each other, the conspiracy is complete, if the agreement in its nature is a conspiracy. If this petition amounts to a conspiracy I will admit it exists; still, however, human tribunals cannot act upon it, until some overt act evidences that such an agreement was made. So long as it continues in the breast of those who made it, human tribunals cannot investigate it; they must have as evidence of their intentions some fact, upon which to found their knowledge or belief of such conspiracy. This overt act is, generally speaking, evidence of an original agreement. It shows that at a certain time, at a certain place, by words at least, more generally by writing, such an agreement was entered into, and such persons were parties to it. Of such an agreement no evidence has been given; there is nobody who pretends to have been by when it was made, in the vestry room, at a tavern or dwelling house. The defendants in this case entered into no such agreement. They have been indicted on a paper which has been produced and which is no agreement between the parties themselves, but a petition to the corporation for favors, in which certain words, upon which much stress is laid, are written. From that petition to the corporation, the design is inferred; from that petition you are to decide if the defendants are guilty of the conspiracy alleged.

You have observed, gentlemen that all the evidence which has been adduced, overturned itself. If in a court of justice,

one should say that standing at such a time, on a house in Calcutta, he threw from him a five-penny-bit which instead of falling, ascended into the air, and would bring one hundred persons to swear to it, would you believe it? No. Did not the nature of the thing, imperilously control the endeavor of individuals, to control the actions of the English party, is it not evident such an agreement could not have been entered into? Let us now look at the evidence adduced, which, although it be all true, is irrelevant, it goes to prove an absurd point; to establish an unnatural result, and therefore cannot, ought not have weight.\*

There is, however, no evidence that they did unite in a confederacy to stop the introduction of the English language. With respect to the declaration of individuals, in what point of view are they to be considered? In every free country there ever will be two great parties, differing honestly in opinion, and exasperated frequently against each other, when great matters call upon their feelings. At such a time is it possible to expect that angry words will not pass from one to the other, and that there will not be threats, almost rising to violence, but not reaching to it? Why, at the general election, when one had said such words as, "blood is flowing," or "blood would flow," has it ever been considered to be in consequence of a confederacy of the party to which he belongs? Has there never been an election in which one side or the other, or on both, one has said to the other, "you have combined by all means, lawful or unlawful to carry your election; and you have sent angry rascals here to carry your designs into effect, who have struck such and such persons, and created a riot and disturbance? How far is this to be carried?" Is it to be supposed that the great parties which divide the United States are to be liable for such angry, rash talk of individuals? If they are, they both are liable to be convicted for conspiracy against each other. These individual acts are not imputable to, and cannot effect the body. These ebullitions of temper are individual, and generally per-

\* *Mr. Levy* here reviewed the evidence on this point.

sonal, the party have nothing to do with them; they frequently arise upon sudden gusts, upon insults given at the time; and if they are evidence of the confederacy of a party, it must be supposed, the party knew beforehand, the word, look, or other circumstances of aggravation which occasioned the blameable act.

It is a rule, that the law shall not examine too strictly in criminal cases; the cord shall not be tied too tight. Words cannot be evidence of conspiracy; when they end in riot, in breach of the public peace, let the guilty individuals be punished; let them be brought to the bar. But let not those harmless words which break no bones, which are spent in the air in which they are breathed, combine in a conspiracy these respectable men, who are reputable and industrious and generally easy in their circumstances. Thus much have I said respecting the preliminary words and facts in evidence.

If there was a conspiracy to prevent the introduction of the English into the church, how was the object to be effected? By election—then the power was to appear from the result of the election; and if the English party would have a majority in the corporation, they would have the rule in the congregation. For, notwithstanding all that has been said of the powers of the congregation by charter, the powers of the congregation are limited and confined; when the vestry is chosen, every thing else is to be done by the vestry, and the great object is to get the vestry, all, on the side of one of the parties. This was the attempt, and the artfully strained efforts of the English party were to get the majority in the vestry. The election was the place at which the force was to be brought forth on each side. If they gained the election it was the sum, substance and aim of the controversy; if they gained that they gained every thing. If they lost it they lost every thing. This was the point, to gain which every exertion was made, and both parties knew it. You are to see then, if the German party had determined to keep the English party out from the election; and it is by this election, I am to test the fact whether there was a conspiracy or not. If



there was not a joint effort to waive the election, or prevent it; there could have been no combination for that purpose. Let us see what was the combination at the election. If there was not any combination there, the school house meetings are of no consequence; they could not have been more than introductory. But there are more necessary matters to be inquired into, than the pot-hooks and hangers, by which the good writer has gained a good hand. If there was no combination at the election, there could have been none to disturb and defeat it. If there was a systematic design, to prevent by all means, lawful or unlawful, the English party from exercising their rights, at the election, it would have appeared there—and I trust I can show you that all the irregularity and violence there exhibited, were the effect of the unlawful, interested and artful conduct of the prosecution. All the disturbance excited there, was as entirely the effect of their machinations, as the falling of a heavy body is the consequence of its rising. It began with them, their conduct was the cause of all the subsequent disorder. It has been said, there was a disturbance with Lex before that with Wagner began, and that it was by those who wore the badge on their hats, the little eagle, against those who had not. That the moment Lex appeared, they knew him by his not having it, and treated him accordingly. If this is the least reason that can be given, it shows, the best reason is lighter than a feather. It has been said, when Lex came up to the railing, they pushed him off, because he had no badge. Now, none of the vestry had badges in their hats and therefore it could not have been because he had not the badge. I admit he was attacked, but it does not appear he was attacked in consequence of any combination; what was the cause, has not been explained; but it does not appear to have been in consequence of a great effort. Upon what ground the controversy was entered into, remains more obscure than any other circumstance in this case. There was a cry of "turn him out," no injury was done to him and he suffered nothing by it.

This having been premised, I beg leave to call your atten-

tion to the charters adduced in this case; a due understanding of them is absolutely necessary to a decision of the question now under consideration.<sup>4</sup>

*July 18.*

*Mr. Moses Levy.* Gentlemen, I am not disposed to controvert the doctrine in 3 Burr. 234, that the corporation can not make by-laws inconsistent with their charter; but I do say that this by-law is not inconsistent with the charter, and I think it will appear clearly in evidence that this by-law, the existence of which is so decisively proved by the document in evidence, to which we have referred, that no doubt can be entertained of it, was passed after great consideration for the best interest of this institution. I have observed that so long as there was no controversy the exercise of the corporate powers by any officer of the corporation or by the corporation itself was never questioned. When men agree in opinion they never enter into disputes about the authority of each other to act. It was in conformity with this general principle that we find great inattention paid, in the early stages of the administration of the affairs of this congregation, to the charter and act of assembly. It is impossible to know who exercised the power of appointment before 1805; sometimes one is said to have done it, sometimes another; sometimes the witnesses state it to have been done by the corporation, and sometimes by the congregation.

What was wrong in the election? Was it not conducted in as fair a manner as it could be? Where is the man who can say he was prevented from giving in his vote? No one can say so. Away, then, with the idea that any of them were inhibited from voting; every man had an opportunity to do so. Instead of showing disorder and confusion to the prejudice of those in favor of the English side, when the Germans had so large a majority as two to one, their conduct was honorable forbearance, and entitles them to praise, not censure. The votes on the English side amounted to 240; the votes in favor of the German amounted to 530

<sup>4</sup> *Mr. Levy* here discussed the construction of the charter.

odd; there was therefore a majority of more than two to one. I ask you, Did not each party know its strength? The Germans knew well those who composed their party; the English knew those who composed theirs. With the majority of two to one, the Germans could vote in the men they chose and keep out those in favor of English; with a power to effectuate their purposes by lawful means, to carry their point consistently with the laws and Constitution of their country; conscious they were of the majority, knowing they were able to carry their point by fair means—I have always heard cunning is the part of the weak; the strong are sure of their own power and would not use it—what need was there for the party to combine? Was it necessary? Unquestionably not; they were able to effect their purposes by lawful means, and they knew it. Why, then, should the majority join to keep out the English party, the minority, by all means, lawful or unlawful? These respectable men, brought up in a peaceable manner, can not be supposed to have combined to do that by foul means they could do by fair; to bring themselves into a law suit, its trouble, its expenses, and amercements, when they could gain their end without. Such a confederacy was unnecessary, and they knew it was so. Is not this itself a volume upon the subject? Is it not sufficient to prove that they did not enter into a confederacy, because it was totally unnecessary for them to do so? What evidence is there that they did? Is showing that it was next to impossible that they could have used unlawful means evidence of it? Let me say, if they had conspired, or combined—conspired it could not be—to keep out a man from being inspector by all the means they could use for the purpose, it would not have been unlawful. If I shoot a man in the street, it would be right that the law of the country should take away my life, because nothing justified me in taking the life of another; but if a midnight robber enter my house to injure me or my family, if I kill that man, it ceases to be murder and becomes justifiable homicide. Although in a time of quiet it would have been

wrong to have drawn Wagner from one part of the room to another, yet, when he endeavored to violate their rights, he justified a great resistance upon the part of those whom he was going to injure and they might turn him out by force if they could not otherwise.

Let me ask you what argument is there to prove that they combined to use all means, lawful or unlawful, to prevent the introduction of English preaching? Allow me to say that, as it is the introduction of English preaching they are said to have combined to prevent, any force, unless used when preaching was about to be introduced, would not have been in consequence of such a combination. The charge is confined to their resisting by force the introduction of English preaching. In such a case they would resist all persons advocating the English and who wished to convene for its establishment; and yet no one instance is attributed to them in which, when English preaching was to take place, they attempted to prevent it.

In the case of the shoemakers in New York there was an original paper they had signed; the agreement itself was in evidence, and it was fully proved there was such a paper. In the case of the journeymen shoemakers here it was proved that such a paper existed. Where is the agreement in this case? Is it the address to the corporation? No; that is only a paper, addressed to a few persons, in which they say, "We have agreed with one another"; but there is no such agreement in evidence. Perhaps, gentlemen, it was a mere ideal say-so in the petition, or there is no evidence of such an agreement having been made between them; but there is reasonable evidence before you that there never was such an agreement. How many witnesses have been examined in this case on the one side or the other? Perhaps between 40 and 50. Which of them ever saw any agreement on this subject? Not one of them. Who said he was present at any? Not one. All there is in evidence concerning it is a petition in which they say what I shall by and by call your attention to. But that petition is evidence, if evidence at

all, of a thing before perpetrated and committed, and not of that which had been agreed to be done. Not one of the witnesses ever saw such an agreement or knew anything of it. What, then, is the meaning of this petition? It is palmed upon us as a paper from which the most foul and criminal designs may be inferred; from which the opposite party have a right to say there was a determination and combination, by the sacrifice of blood and life, by the active expense of blood and treasure, to prevent the introduction of the English preaching; and absurd it was, certainly, when they could do it without it. Where there is an improbability, gentlemen, the proof ought to be doubly strong. If a man should say he had starved for two days, and should come where there was some meat, and when he went away the meat was gone, the presumption would be great that he had taken it. But if he had come there having his appetite fully satisfied and with victuals with him more palatable, it would be absurd to think he took it. When the presumption is absurd, therefore, the evidence must be doubly strong. Let us now see if it is so.

Two things are to be shown by the opposite side: That there was a determination to prevent by all means, lawful and unlawful, the English preaching (these words lawful and unlawful are absolutely necessary), and it must be proved that they endeavored to carry their purposes by unlawful means. Now, let us look at the address.

I do not understand the German language, but must depend upon the meaning of the word "attack." This is a determination to defend with their bodies and lives their worship against an attack.

In one sense of the word "attack" it is aggression, it is an injury suffered by the person attacked, and it is a trespass, or what is equivalent to it; and if they had said they would defend the German worship against any aggression, against any attack to introduce the English, there would have been no harm in saying so. Attack may be of various kinds; it may be with force and arms, with force and vio-

lence; and therefore it was merely an engagement that they would act defensively, there was no impropriety; they had a right to defend themselves against an attack, with force and violence, and to oppose with all their power the introduction of the English language by force. I do not know the idiom of the German language, but I do of the Latin; I know *totis viribus* is in Latin equivalent to "with all our power" in English. If a man say *totis viribus*, he will resist. The literal meaning is not that he will resist by blood or by force of arms. It is a common expression among lawyers at the bar, "I will resist such an attempt *totis viribus*." It is a common expression among statesmen. It is enough that there are many idioms in which we say, "We will oppose with all our power," and it does not mean with all our force, but a particular application of it.

The last sentence is the only one worthy of remark. I will merely call your attention to it, as the gentleman who follows me is well acquainted with the German language and will be able more fully to expound it than I can. Well, now, gentlemen, where is the harm in that sentence? Let the most rigid critic dissect it; I will defy him to extract from it any evil intention. Supposing "body and life" to mean the worst it can, what is there appears in it to show that they conspired in unlawful measures to prevent the majority from preaching in the English language? Nothing appears but a determination to support the corporation, chosen by the majority, in effecting the advancement and support of the divine German service. In supporting the German worship they could not intend anything unlawful or immoral, and therefore they pledged themselves to nothing unlawful or immoral.

This is a criminal prosecution, depending upon the meaning of words. Words argue an intention, but intention must preponderate, even though the words are put to express it. Words are the covering by which the purposes of the heart are discovered; but the words may be improperly used. And yet, if the intention of the heart appear, the words shall

give way to the intention, and convey the signification which was intended by them. There was a time when "rogue" and "villain" applied to servants, and by them not any bad qualities were implied; they were formerly expressive of the condition in life, now they express the immoral disposition of man. As words are used in a variety of ways, they sometimes are used indifferently and improperly. A law was made that whoever spilled blood in the streets of Rome should be punished with death, yet a surgeon having opened the vein of a person in the street who had fallen down in a fit, the intention prevailed over the words, and although it was within the words of the law, although it was exactly in the face of the law, that punished the drawing of blood in the street with death, yet it was decided that the surgeon had not incurred the penalty.

The words are not to be considered as a critic would regard them; but they are to be given that meaning which the person who used them intended they should convey. To say that these men should know precisely the meaning of these words is not to distinguish the ignorant from the learned, but punish them for being ignorant. We must now inquire, not what was even the common signification of the words, but in what way did the men using them mean them. This happens every day. If I were to sell you my house in Chestnut street, west of the bank, and I had no other house than the one east of the bank, you would take that one by the grant. Do you suppose those who drew up the address had these dictionaries before them? No, gentlemen, they used the words as common men understand them, as they are understood in common acceptance. If they meant them innocently, it is no matter whether the strict meaning was bad or not. If a man use the words "body and life" innocently, he ought not to be convicted because the strict meaning of the word carries guilt with it. With what intention did they use them in this case? We have examined three impartial men upon the signification of these words; do you think they have perverted the truth? Would

they perjure themselves? What have they said upon these words? Let us turn to the explanation they have given. The first is Varrin; he says, "These words show an attachment to a thing; they are used by the most sincere friends to each other in parting; the bride and bridegroom use these expressions towards each other." Upon being asked if he would understand them as conveying a threat, he answered, "By no means; it is an innocent expression—in prayers it is used." Here is the testimony of a gentleman which, on account of his language and manner, is deserving it appears of credit, and what does he say? "The words are not understood in a bad sense." Why, gentlemen, is he not an host of evidence himself? Will the opposite party say he does not understand the German language? Will they say he is suborned and has made his words subservient to his will? They can not say so; they can not say but that he is worthy of the utmost credit. But, gentlemen, is he alone? No. Dr. Helmuth has also been examined; he was called to translate the paragraph. "The literal translation," says he "should be with body and life—there are two sorts of expression—the one is by adding the preposition 'by,' as 'bey Leib und Leben'; the other is 'mit Leib und Leben,' as it is here, 'bey Leib und Leben' refers to the person who is spoken to, and implies a sort of threat, but a threat that the mother to her children will give, who will say, "Do not do that by body nor life"—sometimes the word 'body' is used alone, sometimes both the words are used—the threat refers to the children, 'you will suffer for it if you do it.' 'Mit Leib und Leben' is an expression that refers to him that makes it; if there is a threat in it, it falls upon him that speaks. I take it they are used in a lawful sense." The next witness was Dr. Collin, and his explanation agrees with that of those gentlemen. He says, "The words do not imply anything unlawful; I shall tell my idea—it is the very same as the strong animated expressions which we often find in political books, in parliament, or in our Congress; it signifies this, that we will defend our good cause with our life,



if it be necessary ; my impression is that it never could relate to the present affray that happened ; it is an expression very general among all people, religious and political."

Then, gentlemen, here are the explanations of three clergymen, respectable men, as to these words ; they say "body and life" is only an innocent expression, does not convey any threat and is the declaration only of what the defendants would suffer for a good cause. It amounts, then, to this, it does not mean that they would take the lives of others, but that rather than the English language should be introduced they would lose their own lives. And a very great difference there is.

"By body and life" has the worst meaning ; in "mit body and life" there is no threat, it signifies what you yourself would suffer rather than endure what you deprecate. Would the gentlemann on the other side say that if these three gentlemen are wrong in their explanation, they do not understand it in the sense which they gave it ? And if the defendants did understand it in the sense these three gentlemen did, they did not mean to convey a threat to any others, but merely to say, "So much do we love the German worship, so much do we deprecate the admission of the English worship, that we would suffer any deprivation rather than it should be introduced."

I am not astonished, gentlemen, to see that you are impatient at the unusual length of this trial ; I am not surprised at it. I will therefore leave you upon what has been said and the observations of the gentleman who is to succeed me. Upon the whole, I think it very improbable that there was ever such an agreement as the prosecution attempt to prove ; and, if there was, neither by these words, "mit Leib und Leben," nor by the acts of the defendants, has it appeared that they ever intended to carry into effect an improper purpose by unlawful means.

MR. RAWLE, FOR THE DEFENSE.

*Mr. Rawle.* Gentlemen of the jury: If I could for a moment suppose that the spirit which instituted this prosecution was likely to be gratified by success, I should feel some anxiety in addressing you. When I hear the counsel for the prosecution tell you that these defendants are indicted of an infamous crime, when I look into our law books and find that conspiracy is laid down as such in those books, that the effect of a conviction is fine, imprisonment, and a certain portion of civil infamy as to the person convicted, who can not be received while under that taint as a witness—I am induced to look on those as not guilty of that crime who are now brought before you. I see these fellow citizens of mine, of yours, the heads of families; men upon whose daily exertion numbers depend for bread; who in every other situation in life maintain unspotted characters; I see these men in jeopardy (on the ground industriously sought for the present purpose) of being torn from those families, of having those daily labors suspended, of being put in the workhouse, as one of the opposite witnesses said, stigmatized, unless a pardon be extended from the executive, rendered incompetent for any judicial purpose—when I see these would be the consequences of a conviction on the proceedings adopted, then I feel a degree of consolation, because I am satisfied, as this attempt is attended with so much evil, in proportion as we can trace out its source and discover the motives that lead to it, in proportion as we unravel the whole plot, every step that we proceed, the acquittal of my clients becomes more certain. I wish you, gentlemen, strictly to decide upon the charge laid before you; to take care of confounding the charge in the indictment with others that are distinct. You are to consider whether the defendants are guilty, if guilty at all, in manner and form as they stand indicted. With this previous impression upon your minds, I feel confident that I may intrust the case to you, with that attention to the evidence you are bound to administer.

Let us in the outset consider the charge and endeavor to understand the nature and the leading character of the offense imputed to us. Fifty-nine persons, beginning with Frederick Eberle and concluding with John Harper, are indicted and charged that they, on the 26th of December, conspired by every means lawful and unlawful to prevent the introduction of any other language into the church. This is the charge, whether there is sufficient foundation for it, you are to judge.

I need not refer to books for the purpose of stating what is the meaning of riot. Riot is a turbulent act of an unlawful nature, committed by three or more persons. The law knows no riot; no court and jury can determine upon any act called a riot, unless there have been three persons concerned in it. This then is a ground not disputed; but observe, gentlemen, I am not endeavoring to fly the charge, upon the ground of the riot not being properly laid; I shall answer the whole charge as fully as I can, by showing you, that it, in no form, in no shape, has been supported by the prosecution.

The riot on the election day, is the first of these charges. By confining my remarks, to what took place on the election day; I will reserve for your future consideration, what took place at the other meetings at the school houses, and other places, which will be seen more fully by connecting their consideration, with the essential part of the charge.

On the election day, there defendants are charged with having raised a great noise.<sup>5</sup>

Gentlemen, I have thus gone through the acts of the election. I submit with confidence, that there is nothing in evidence to constitute a conspiracy; and that the prosecution have made out no case to entitle them to a verdict of guilty. To make it a conspiracy, I trust I shall have the sentiments of his Honor with me, that the conspiracy may be laid aside as respects the evidence; and that unless the riot was actually committed, you must find the defendants not guilty. I call

<sup>5</sup> *Mr. Rawle* here reviewed the evidence as to the disturbance at the meeting.

to your recollection, that this is a party prosecution; a prosecution of men, combined together for the purpose of gaining their view as it is alleged, unlawfully, in which there are admitted as witnesses the leaders of the prosecuting party, an advantage which the leaders of the German party may not have. You are not to consider this as a proper prosecution, where the laws proceed, superior to influence or partiality; in this case it is in the power of the English party to shut the mouths of the others, and the most intelligent of their party are admitted, and a ground is open for them to give their testimony as they chose. We cannot divest ourselves of the idea, that of all the impressions made upon the mind, and the mind acts immediately upon those offered to it, nothing is more permanent than those of a religious nature; and the impression that these men, indicted to favor party views, are denied an opportunity of explaining their conduct, does not a little affect our consideration of this question.

I will now submit to you, whether independent of any riot, there exists a conspiracy by all means "lawful or unlawful," to prevent the introduction of the English language. It is a sweeping charge—but one which, independent of acts, would need but little legal discussion; for I do not know how the question of conspiracy itself could bear a serious argument. I do not perceive that it is necessary to question the doctrine laid down by Mr. Binney, that a combination to do an unlawful act, or a lawful act by unlawful means, are equally indictable. There is a very amusing report of the trial of the New York journeymen shoemakers, which has been adverted to, and in which there is a powerful argument of the celebrated Mr. Sampson for the defendants, in which the court laid down the same distinction as in the case in which my colleague presided. This is not a question of law; but an allusion to the decision of my colleague, formerly, was thought necessary although there was not anything in the argument of my colleague, as recorded different from that he made use of as counsel in this case. In the case of the journeymen shoemakers, there were no words like "body and

life," or anything of that sort; but there were acts, and it appeared, there were rules passed, which the prosecution knew of, whereby they undertook to force other journeymen to come into the same measures they had determined to adopt. In consequence, every journeyman, whether a member, or not, was forced to submit; for their practice was to make a strike, as they called it, at the person who employed them, and they called the unconforming journeymen "Scabs." These scabs were not only excluded from all places in which they were at work, but were considered such vagabonds, that they would not be allowed to board in the same house or drink out of the same cup with the others. This was the case before Mr. Levy as recorder; and if these defendants had associated together and said, we will compel the English side to hear German preaching; or the Swedes to hear our German language, then there would have been some resemblance of this case to that of the cordwainers; but I see not the slightest degree of that inconsistency imputed to my friend Mr. Levy. Another reference was made to the case of the German Roman Catholics. That question was, whether a person, who contributed to the maintenance of the ministry, was to be allowed to vote at the elections, when not a German. The answer was, "you have received him as a member, and having so received him, it would have been a mockery to say, you are obliged as member, to contribute to the support of the congregation; but you shall not have the benefit of your membership."

I now proceed to the offensive paper, which is supposed sufficient of itself to carry these individuals to the jail, constituting a crime in itself, and if nothing was done more than affixing their signatures to it, is sufficient if it had never left the table on which it was signed, to render every one who had put his name to it, liable to fine, imprisonment and loss of character. Let us now examine it; but if this is the way you are to examine by law every religious proceeding, we must tremble at every step we take, and at every line we write relating to the maintenance of religious rights; whether we are in error or not, the argument is the same, and fine, imprison-

ment and ignominy await you. What is this paper? The question is, is it a confederacy, a combination? It is a petition to the corporation, who were in actual exercise of their functions and looked up to by this, as well as the opposite party, to give that direction to power which in a call from one and the other they deprecate.

In this production I ask, what is there, either offensive to religion or to law? Here are gentlemen who come forward and express in sincerity and with zeal, the feelings of their hearts at an attempt which they understood was to be made to introduce discord and destruction into their worship. They addressed this, not to the party to incite it to improper acts; but to the members of the corporation, from whom certain acts were necessary to proceed, in order to have any force given to those in favor of the English language, if they should proceed to introduce it. It is not an agreement to do anything, but a request that their officers may act in such a manner, and we find it no more than what is in itself, not only orderly but perfectly consistent and agreeable to their character. Respecting the third paragraph, you will recollect, that Dr. Collin, together with two other witnesses, were asked, if the words were different from the import of them in the other paragraph, they said no; the third paragraph was stronger, but the words were the same.

What is the amount of this? In the first place they have declared themselves to the corporation, that they will defend with their bodies and lives, the German divine worship. The signers were supposed by this, you will recollect, to have referred to some secret agreement, before entered into; it was supposed that they had taken an oath, something like that taken by persons who have made resolutions to attain unlawful ends. But it appears, they understood taking an oath to God, equivalent to making a vow to him in a most solemn manner, to support the German Lutheran congregations. They considered the sacrament as an oath; and it is expressly stated by one of the witnesses, that no oath was ever known to be administered to any person to support the German di-

vine worship against every attack. You are told by one of the gentlemen, that it means to resist an attack that can be lawfully resisted; and, therefore, in the manner here stated, they united to defend with their bodies and lives, the German divine worship against every unlawful attack.

The words "strange language," it appears have given offense; it was considered an insult to call the language of our country a strange language. If this matter is to be considered of any consequence, what foreign family is there in the United States who would not, in speaking of the English, call it a strange language? The Germans are a family, a German family widely extended; unquestionably in reference to this family, it is equally a strange language and foreign; the German in the language of their land. We perceive throughout this petition; for call it conspiracy or what you please, in point of fact it is a petition, only an application to the corporation addressing them as their honorable corporation.

Gentlemen, they honor their corporation and their German manner of worship; and I hope it will not be considered any disparagement to these men, that they who are best acquainted with the German language, are most attached to it; that they discovered something in that language which caused their attachment to it, you must see in that expression which we coolly and not so enthusiastically may admire; it is the language of sincerity, it comes from the heart, and cannot give offense.

Is there a combination to erect anything like a standard of reasonable opposition? No; they refer them to the charter of the church, telling them in the first place that there cannot be anything done, but by two-thirds of the corporation, and the concurrence of the congregation. You see what these gentlemen were anxious to prevent; but you will see it more clearly when you come to examine this petition. An application was made to put it to vote, which induced them to appeal to the charter, and they proceed in the next place to require that they shall not put it to vote, whether the Eng-

lish be introduced into the churches. Now, gentlemen, you see how they go on step by step; so far we have come to no particular act, inconsistent with their charter. They then expressed an apprehension, that if the opponents of German preaching, are allowed to meet in the German school houses, it will be considered as an encouragement to the attainment of the English language. So long then, as the German continues to be the only proper language of their corporate body, so long these gentlemen are right and correct in saying, that if the English party are allowed to use the school house, they receive a certain countenance.

After having thus specified the particular objects upon which they pray the corporation to act, and this is the whole efficient intention of this writing, they request the corporation to do three things—first, not to put it to vote, whether the English language should be introduced; secondly, not to allow the members of the corporation to speak in English, and thirdly, not to allow the English party to meet in the school house; these being the three objects of their petition, they then come to a summary of the ground they took in the outset. Allow me here to say one word. At first view, a literal translation of the language makes it appear almost an absurdity from the difference of idiom; for instance, they say, “this congregation was established by our ancestors, who gave their wealth and their blood for its establishment.” Does not this appear ridiculous? Whose blood was given? Their blood never flowed, as far as you can be led to understand, in this country. They have lived under an equality of right, from the commencement of their church, when the wisest man of his day, made it one of the fundamental rules of his settlement, that every man had a right to worship as he thought proper; they had no necessity for the expenditure of their blood for the purpose of founding their congregation. It means something that cannot be well rendered into English, that what was most valuable was constituted at that early day to the establishment of the church.

Let me pray your attention to a side blow, attempted to be



given to the evidence. It was insinuated that those who now advocate the German language, were not the descendants of the first founders. What proof have you that supports this position? A position, which can only depend upon presumption; that the German was only advocated by those who are continually arriving in this country, and, who wish to have a church to worship in, in a language they understand. What is the course of German education here? We know that when a wealthy man comes here, he generally wishes his children to be educated in the English language, and not in that, in which they were theretofore brought up. But is this the case with the whole congregation? If there is a set of men who are going off every twenty years like a swarm of bees, in consequence of their following the example of those desirous of using the English language alone; yet there is an equal proportion who have not deserted the religion of their ancestors, who are not able to give their children an education to enable them to abandon the language of their fathers. Such are the industrious tradesmen who use it in their prayers, when they go to bed and when they rise; and to whose judgments the doctrines of Luther can only be addressed, when spoken from the church their ancestors founded, in the original language.

These being the objects of this application; these being the fears they expressed lest the English should be introduced; fears so great that they declare towards the conclusion, that if the breadth of a finger be given up, the whole will be in danger; (and according to Mr. Binney's argument, there is great danger; it shows that there was some foundation for the apprehension of these people); they solicit in the conclusion that they may not be made a subject of laughter to other nations, and conclude in the respectful manner that would be expected from them to that honorable body.

We now come to the words "body and life," upon which the case of the defendants must turn. We are to consider the proper meaning and construction of the words themselves. I will meet the gentlemen upon the ground, that a

reference is to be had to their declarations and words expressing an intention at a subsequent period, to ascertain what was the intention of those who made use of these words. First of all, let us consider, how far the antecedent expression warrant the implication that more was meant than meets the ear; that the intentions were to defend with body and life, the German worship, to resist a lawful attempt to introduce the English. It is conceded by Mr. Binney, I pray you to recollect, that if the word "attack," means an unlawful attack, then there is no harm in it; but he considers it to mean a lawful attack; although he has also conceded, that it may mean a lawful as well as unlawful attack. He has endeavored to prove that it means a lawful attack, because the words in connection, import an intention to expose life and limb in support of the object for which they had united. I will now show you the acts by which we are to be supposed to have made an unlawful attempt.

They argue in favor of the German, being the only language that can be used in their churches; and take a very strong ground that neither the congregation nor the corporation can legally give away their privileges; that it cannot be decided by voting, whether the English can be introduced, because the charter had clearly decided the point.

There were certain individuals, with respect to whom there was unbecoming language. I am far from defending the language of Christian Schmidt; but because I will not defend him, are his offenses to be visited upon my clients? Did they persuade him to make use of such language? If he went there and acted in an intemperate and improper manner, let it be on his own head. If Burkhardt was offended, he had his remedy; can you impute to all the members, who united in this application to the corporation, that they are implicated in the case of these words "you are a Judas and ought to be hanged." But remember, when Busch tells us this; and it is not the only instance in which he tells us only half the story; when he could tell you that the beer was carried to the inspectors; when he could tell you of the expression of "here comes

the Lord God of the Germans," but not that he made use of it; he who tells the expression used to Burkhardt, does not tell, what is in evidence, what was said by him to Schmidt at the same meeting, at which these very offensive words are imputed to the party. I think Kepple, who testified that upon Schmidt's saying something, Busch said to him, "hush, hush," upon which he answered "no, when I have a rope about my neck then I can speak no more." It shows how this man is to be understood, where he speaks thus to Burkhardt; there seems to be in the language something in the nature of a figure, and merely indicating a serious and fervent manner. Busch has omitted another piece of testimony, that if his saying loud enough to be heard by all about him, "that is a lie," at the German meeting in the Northern Liberties; yet this is the man who complains of the intrusion of the Germans among them. Upon his saying this, some one of the members who heard it, got up and said, "it comes from Busch, I thought he did not understand German." This is also suppressed, but rather we charitably suppose, forgotten by Mr. Busch. Take all these circumstances together, combine them; you will find there are angry expression on both sides, and if you recollect, that the witness who speaks of it, bears harder upon that which is against the opposite party, and that the party whose mouth is shut may not be so fortunate as to have bystanders to recollect what the witness may forget; what does it come to more than this, that there were very cross words upon many occasions, but nothing that can amount to a conspiracy.

We shall be told perhaps this is nothing; there was an interruption of their meetings. If there was, what does it amount to? There were meetings at the school houses of members of the congregation who were going to introduce a foreign language; they had no right to meet there; and I will put it to you, you belong to different sects; suppose there were some in the Presbyterian church who were inclined to introduce the Catholic worship or vice versa, and that they were to have a meeting in their school house, would you not

be acting in a most regular manner to interrupt it? Where is the difference? Some look to mere matters of faith, some to mere matters of form; as in the party of Friends, they think that a hat must not be taken off, and that colored cloths should not be used different from their other Friends. Now suppose a party were to undertake to meet in one of their school houses, to alter their custom, would it not be justifiable for them to prevent it? Certainly so. So in this case, they consider it their duty to use one language, and they have a right to attach importance to it. No tribunal of an earthly nature can pretend to say that these members are wrong in considering this as a most important part of their church worship; and therefore they were justifiable by the laws of God and man.

*July 18.*

ATTORNEY GENERAL INGERSOLL FOR THE PROSECUTION.

*Mr. Ingersoll.* Gentlemen of the jury: It may seem paradoxical, but it is certainly true, that frequently acts perfectly well designed, occasion the greatest possible rancor and spirit of revenge. I have lately seen a book, which probably his Honor has also met with, and some of you likewise, entitled, "Paul's Letters to His Kinsfolk," in which we have stated more at large what had been before imperfectly mentioned in our newspapers, the excitement which has been occasioned among the Belgians, because the King of the Netherlands had it in contemplation to allow a toleration of religion. They have been accustomed to have an arrondissement as it is called, to transfer the inhabitants from one government to another with as little ceremony, as you would change the pasture of your horse or flocks. They have been accustomed to general conscription; the son is taken from his parents to distant parts of Europe, there to pine, sicken and die in unwholesome camps, or perish in the field of battle; this has been suffered without a murmur, but the instant it is suggested, that people shall be taught in their own language, and not in dialects which they do not understand, and

that every man may worship according to his conscience, we hear the spiritual thunders of the church give note of dreadful preparation; and we are told in language, pretty much what we have heard on the present occasion, that if it be carried into execution, and people pray and preach in language they understand, the only true religion will be extinguished, and consequences of the most alarming nature will be the inevitable result. This, gentlemen, in part, is what we shall trace as the dictate of mistaken zeal, often well meant; but when without a knowledge of our laws, and opposition to them, it assumes the seat of reason, it is impossible to set limits to its wild, infuriated progress.

Let me relieve you from the fears very ingeniously suggested by my learned friend, Mr. Rawle; he tells you that in case of conviction, the defendants are forever rendered ignominious; they are stigmatized as having committed an infamous offense. These consequences are represented to you, that you may not fairly meet the question and give your unbiased opinion. For your consolation let me state that in the same shoemakers case, where there was a conviction, the tremendous result was a fine of eight dollars and nothing more. One other particular result of prejudice, allow me to notice as a matter of prefatory remark. Why this hostility to the English language? I have no difficulty in concurring with those who may think with Mr. Duponseau, that it would be more proper to say, the "American language," because, although it is the language spoken in England, yet we have only approved it and adopted it for the purposes of convenience. When the United States emerged from a colonial state, they had a right to select the French tongue as well as that of Great Britain—convenience led them to adopt that, to which the majority were accustomed. There is no reason then to be prejudiced against this language on account of its name; and to the patriotic German it is pleasing that it is the language in which the declaration of independence is announced, and in which the charter of our liberties is written and preserved. With regard to the Irish, what

have they done to deserve that their name should be a term of reproach? They are our mechanics, our day laborers, our manufacturers and our pioneers, who clear the woods for the German cultivator; they were among the best of our soldiers in the revolutionary war, why then entertain this ungenerous prejudice? Prejudices may mislead, but cannot possibly inform court or jury. Having thus, gentlemen, noticed these preparatory matters, I recur to my question; and my great object is to speak with perfect clearness, that I may not be misunderstood. What are we now to try? What is the court and jury to determine? Whether the English language shall be introduced into the worship of the churches of St. Michael and Zion? By no means; we have not, nor has the court, and I am sure you would not assume to yourselves, such jurisdiction. All we contend for is, that the question which the congregation are competent alone to determine, shall not be decided by either party alone, by threats, or by spilling of blood, but with calmness and deliberation by the vote of the congregation, fair and unprejudiced by any undue influence whatever. There is another circumstance calculated to excite prejudice; we are told, "here is a criminal prosecution by one party, in which they are allowed to come forward as witnesses, while on the other hand, silence is imposed on no less than fifty-nine persons." It is difficult to avoid censure, when there is a disposition to find fault. The prosecutors had one of two courses to pursue, either to bring a prosecution, or to institute a civil action; what would they say, if a civil action had been brought. "Here these persons so much interested for religion, adopt a civil action to get money;" this would be attributed as their object and that very measure would have been censured. Let us know exactly what is the object to be tried. The only question is, as to the introduction of the English preaching in these two churches occasionally, or alternately with the German; as to the degree of proportion, the congregation has all the power of the legislature to decide, shall this power be controlled by election, or by force? We contend, that if you can be con-

vinced, that these gentlemen who are now endeavoring to impute malevolent designs, undertook to say, "we will prevent the introduction by force if we cannot in any other manner," we are entitled to your verdict.

If indeed, there is the impediment in our way; that by the charter, the divine service of this congregation must be forever performed in German, then we fail at the threshold, I acknowledge; convince me of it, I close my mouth at the instant and enter a *nolle prosequi*. The position is all important, they ought not to let it be doubtful; no time would have been better for showing this than at the moment of election. Is it in the charter? Or is it in the fundamental articles? If it be, let it be shown in argument—let my opponents show one article that prevents the congregation from introducing the English worship when they think proper, and I will give up the contest in a moment. The Germans, who in 1765, petitioned for that charter, knew better than to introduce a clause of that kind; they took care to leave themselves, their descendants and posterity perfectly at liberty in this respect; and I will appeal to his Honor with perfect confidence, that we are absolutely right in saying that there is not a single syllable that countenances the idea. Whether these men were all of them distinguished as *literata* in their day, I know not nor is it necessary to inquire, but they were assuredly men of piety, and admirers of that great man who began the reformation, Martin Luther; gentlemen, it is an historical fact, as such I mention it, that with that great man it was a common expression, "let not faith be a prisoner to language," that is, let not the great principles of religion be confined to any particular tongue, but let your youth be instructed in different languages, and let the principles of religion be everywhere disseminated. I presume, those Reverend, gentlemen, Mr. Schaeffer and Mr. Helmuth, are contributors to the charitable design of sending Bibles to the uninformed world; has the absurd idea entered into any man's brain, that he would not contribute to the fund, if the bibles were not in the language he speaks. If they were sent into

China, must they not be translated into Chinese. It would be a ridiculous farce if these books were sent without being translated in the language of the country for which they are designed. There is not an intimation in the charter, not a syllable, there is not a single circumstance in the history of that church from the time the charter was granted, till the present moment to found the idea, that the Germans who built these churches ever entertained the absurd idea, that they should not be at liberty to introduce the English preaching at any time, if they thought it proper, under the circumstances of the case. In order to show with what propriety these Germans acted, do we not know that this result necessarily takes place. I recollect, that there was a settlement in the State of New York of the Hueguonots who came from France, their native land, about the year 1692. Is it not certain that every Frenchman who at that time settled in the then colony of New York, has long since paid the debt of nature? And it is not improbable, that of all their descendants at New Rochelle, there are not ten in the whole congregation who could understand the service if it were in the French language, and they, I have no doubt, have their service in English.

Free from this embarrassment we are to consider the charge and defense. I have no hostility of temper to any of these defendants, and do not wish to use hard words unnecessarily. The charge is that not submitting to a decision in a regular course of election and by law, they had the intemperance to undertake that they would exclude the divine service from these churches in the English language all together. If this is my charge, where do I look for my evidence? Oh! says my friend, Mr. Rawle, you look into every nook and corner, you will split hairs, and in that way if you can get anything at all, you adduce it against my clients. If I cannot show you so many proofs upon proofs, that you cannot entertain reasonable doubt, I will acknowledge there is no ground for a verdict of guilty.

“Words fly,” the maxim says, “what is written remains.”



We, gentlemen, have a writing; there is no presumption to be drawn from conversations, where a person speaks without reflection, and the next moment condemns what he has inconsiderately said. Here is the writing where the language is strong, and one would suppose that we may refer to and say, we take your own words, we suppose that what you have written is true, and it cannot lie in your mouths to say, that what you have written you did not mean. Otherwise there never could be a charge in a court of justice maintained, if a person were at liberty to deny what he had written had been intended. What is the nature of the writing in the paper? You are told that it means nothing more than the taking of the sacrament, which in some measure imports an oath. Gentlemen, that writing does not say so; there is no opportunity for that play of words; that is not the expression in the paper; it is that they have bound themselves before God, and solemnly to each other. Well, but says the gentleman, where is that agreement? Show it; let it be brought forward for the inspection of the court and jury. Why gentlemen, it was not in our keeping, whether it was really so criminal as it is represented we know not. If you think you have given an account of it worse than it merits, show it that we may compare it, and if there is a variance, and it appears to be incorrect, you shall have the advantage. No, this is not done nor offered. Well gentlemen, when under their hands, they announce to their corporation, that they have bound themselves in a solemn covenant, that they will oppose the introduction of divine worship in the English language, I am bound to say they did enter into such an agreement. I take their own words for it; and it will not be permitted, that at a subsequent day any should disavow what they had thus avowed, that they should now deny what they had thus declared. An agreement of that purport they did enter into, and the only question must be into the import of it. To save time, your Honor will permit me to refer to, without reading it, and my honorable antagonists will be good enough to correct me if I make any mistake. That paper, the translation

of which we are agreed, is anexceptionably correct, does declare that the conspirators will oppose, I am confident I do not mistake the precise words, the introduction of divine service in the English language, with their bodies and lives; in my imperfect manner of expressing it, *mit Leib und Leben*, have pledged themselves to use all their powers in supporting the opposition. Without relating any more of the writing at present, except to remind you of Mr. Rawle's meeting with the stumbling block in his way about the election, and how careful he was to mention the putting it to vote; no, gentlemen, when pledging themselves that they will oppose the introduction with their bodies and lives, they connect it with an express declaration that it is a question that cannot be decided by election. The original word, I am instructed to say, is properly to hold an election and not to vote; because we know perfectly well that election is not applicable to the corporation, but to the congregation; the corporation have certain legal powers, but with regard to election, it is reserved exclusively as the power of the congregation at large.

If, with body and life, are the words, how are they to be understood? We have three learned gentlemen brought forward to tell us; it seems to me, we cannot understand plain English. Who was this translation made by? Oh! But says my friend Mr. Rawle, dictionaries and books may give words, which may change their signification from time to time but you are to take them as they are understood at the present day. Precisely so, and we have acted accordingly; we made application to Mr. Goodman, a gentleman entirely competent to the task, and his translation we adopt; and recollect he said, "I made it as literal as I could, preserving the sense. Then, pray let me ask, gentlemen, why are we not to understand these words exactly as we would if they had not been translated? If you had met with them in English, would you have entertained any doubt what they meant? They had considered themselves as an *ecclesia pressa*, as Dr. Helmuth says, yet they do, it appears, pledge themselves to carry their point by the force of their bodies and lives. Why,

are we not then to understand it as if it had been written in English? I am not desirous of pressing it unreasonably; I wish to afford the gentleman every reasonable opportunity of giving a proper explanation; but my position is, you are to understand it exactly as if it had been written in our language. We have three gentlemen introduced to give the meaning of these words. Mr. Rawle said that he intended to enter into a critical discussion, but he was going out of town, and therefore not having time, would give it up. I knew the gentleman perfectly well; if he had thought it was necessary to the benefit of his clients, he would have stayed a few minutes longer for that purpose. I do not believe I am at all mistaken in my character of Mr. Rawle. We will take the lights which are furnished, Varrin, Dr. Helmuth and Dr. Collin. What says Varrin? He says these words, according to the idiom of the German language, mean nothing more than strong attachment, affection and earnestness, and are not to be taken in an ill sense. Well, then gentlemen, if it mean affection and earnestness, here is the word "defend" also included. Will passion and attachment protect and defend, and enable you to oppose an attempt you think ought not to be suffered or take effect? They will prompt to action; but all the affections in the universe, unless active, can never oppose nor defend. Well, says the gentleman, "they are never meant in an evil sense," "never to say, you mean to do what is evil or unlawful." I do not take it to be the character of evilly disposed men, when they mean to carry a point by force, to announce, "we mean to carry it wickedly?" Such is not human nature. If I mean to carry a point by force, I do not tell my neighbor, I intend to do it wickedly. Those who read plays, know very well how Shakespeare represents the persuasion of a person to commit a crime, he never places it in the right light which would probably disgust, but it is varnished over and divested of its unseemliness. When the king wishes his nephews murdered, did he say to Hubert, "go murder these boys?" No, he could not but have known that he would have resisted, but he says,

"Hubert, you know these children cross my path in every instance." I do not say that they declared, that they would do what they knew was wrong, but what the law says is wrong. It must, however, be put an end to in the bud, or else that law will be set at defiance. But says the gentleman, it is the common language between bride and bridegroom. I believe he is a bachelor, when he marries he will find that the bride will not be satisfied merely with his declaration of attachment. It is a declaration, I will defend you against every attack made by the husband to the wife; now if the husband should stand by and see a ruffian maltreat his wife, as a passive spectator, would she not have a right to complain that he had cowardly violated his word; and what a figure would he make in endeavoring to excuse himself by saying, Why I did say I would defend you, my dear, by my body and life, but by the idiom of the German language, it means nothing more than a great attachment for you. Would he not be covered with disgrace in acting in this manner? Farther, in the declaration of independence, the congress have pledged their lives, fortunes and sacred honors; I ask you, if one of the honest Germans who joined in this declaration, had been told, you Germans intend nothing by all this, for when you say, you will support this by your body and life, it only means in your language, that you have a great attachment for it, but will not lift a finger in its defense; what would have been the answer? He would have spurned the idea. I deny that it is possible to reconcile what Varrin says with the words "defend" and "support." These words imply action, and it is impossible that they can mean merely a milk and water attachment. If you are to oppose, you are to act; if you are to defend, you are to act; it is impossible to give sense to these words without action being implied by them; it is impossible that they should merely signify attachment. The words, says Mr. Rawle, do not alone support it; I acknowledge it, if not connected with "defend," "support," and "uphold." If the English party had come there with swords, knives and guns, would not the corporation be

right in saying, gentlemen, you have pledged yourselves to attain your object by your bodies and lives. The first part of Varrin's exposition, therefore, is nonsense and impossible; and equally strange is his account, that it is impossible for a person to learn German from a dictionary of German and French; we can certainly learn German from the French idiom; why then can I not know the German idiom from the other side of the book? It is plain to common sense. Then, gentlemen, I say the meaning of these words is obvious when you take them connected as I have mentioned. As to the latter part of it, when men say they will use force, they do not mean to say they will use unlawful force, but they mean to say, that they will leave it to themselves to decide whether it is lawful or unlawful; this, the law will not admit; you cannot judge for yourself, unless it were as in feudal days when the trial by battle was used, instead of that by jury.\*

I did give my opinion as a lawyer, not as a public officer, that the congregation should vote for the judges; my friend says, this was an *ex parte* proceeding; it is true, but I have now seen all the papers, and have heard that by-law read, and I am confirmed in the opinion for the reason I before gave, and I contend, that the body are the electors, and unless there is an express provision to the contrary, the appointment of inspectors of their election must remain with them.

July 20.

*Mr. Ingersoll.* Respecting that committee and the providing the liquor, there was the greatest impropriety; and the earliest opportunity ought to be taken by the courts and juries, decidedly to mark with disapprobation everything of the kind. By way of apology, reference was made to the practice of our elections, at which they have refreshments and liquor. No doubt, and if at the expense of the congregation, liquor and provision are furnished to the inspectors and clerks, who cannot leave the place during the day to get them,

\* *Mr. Ingersoll* here reviewed the evidence as to the disturbance at the meeting.

I find no fault. But I can safely make the assertion that Mr. Binney would sooner lose his right hand, than eat and drink at the expense of a party at an election, when he officiates as one of the judges; the county commissioners provide for the gentlemen who are engaged in the public business; but that the judges of an election are to eat and drink at the expense of a particular party, the thought, I believe, never for one moment was entertained.

*Mr. Rawle.* Did not Busch carry beer in to the judges at that election?

*Mr. Ingersoll.* That is an argument such as that which people frequently make, when blamed for bad conduct, "I am not worse than my neighbors are." But if he did do so, they cannot vest in themselves any virtues, taken from the characters of others. This liquor was prepared by a party, and I confidently trust, our courts and juries will put their veto upon it in such a manner as will put an end to it. Consider well what will be the consequence if it be not nipped in the bud; I hope it will be at a very distant day that elections will be conducted according to the practice of England; but in that country, if a candidate give a mug of beer to a voter, *ipso facto* the election is void to all intents and purposes. Now I ask, was not Hoeckley a candidate at that election? Was he not a member of that German society, who were at the expense of the refreshments, the provisions and liquor? Was he not, as a member, to contribute his proportionate part of the treasure, and therefore a paymaster of that day? When you are deliberating, you will consider this, gentlemen, I make no comment.

This is the way in which the election was carried on; and a mode of very dangerous consequence indeed, giving a character to the proceeding, and an expectation of what would take place. These circumstances having preceded the election, that election, generally speaking, from its commencement to the conclusion was a scene of turbulence, riot and gross impropriety; I acknowledge there were ebbs and flowings of the tide; but still, throughout, there was a scene of

gross impropriety. When I say this, I lay aside all that the witnesses of the prosecution have said; I found my observation upon the information of the defendants' witnesses themselves.'

Gentlemen, our object is not vengeance, nor have we any authority to these particular defendants; it is the principle we want supported. The constitution preserves all the elections and is it possible that all our representatives who framed the constitution of Pennsylvania, could have misunderstood this valuable privilege? It says, "all elections shall be free and equal." Now what says Uhler respecting the freedom of this election; he was asked, "why did you not interpose," "why" says he "it was as much as my life was worth," and he did not interpose, nor did he dare to do it. If elections are conducted by riot, it is impossible to trace minutely every circumstance of disorder. Now gentlemen, you have the opportunity to give an example which will be instructing to the community at large, one way or the other. If it is right, when men have in view a particular object, to say, "we will effect it by force;" and if you have a right to say, or if you wait until you can say, you knew they were doing wrong, but they did not intend wrong, you can never put a stop to such proceedings. Look to Europe, what do you see there? Do you not see instances where the Catholics have been oppressing to blood and death, the Protestants? When these people are arraigned, will you be able to prove they meant to do wrong? Many of them really think, as St. Paul himself did, when they are committing the most abominable outrages, they are doing God service; but when brought into courts of justice, the law must say, whether what they did, was right or wrong. If these people have a right to proceed in this manner, so may we for political purposes; and a number of us may combine and say, "here is a Virginia candidate, whom they wish to elect to the presidential chair, but we will prevent it with our bodies and lives." If gentlemen, men were to join from motives of that kind, I would consider it my

' *Mr. Ingersoll* here reviewed the evidence.

duty, to proceed instantly against anything of the sort, with all the energies of the law. It is the part of juries to say, and the constitution says expressly, that the trials by juries shall be inviolate, it will depend upon them, whether combinations of this kind shall or shall not be suffered.

Gentlemen, it is quite foreign to your inquiry whether English preaching ought or ought not to be introduced. If it appears, that the defendants did agree that they would oppose by force the introduction of the English preaching, I take it for granted, that the verdict ought to be against them; it is a conspiracy. This is the principle laid down in the shoemakers case, and in different cases in the several parts of the United States, in New England, and other decisions. If the parties were not content with the election of the congregation, they had an appeal to the law; for there is no difficulty in this respect, if the election had been irregular, the way was perfectly open for them, they had a right to call upon Mr. Rawle, and Mr. Levy, to whom they applied to defend them, and say, "apply to the court for an information in the nature of a *quo warranto*;" and the court would have the power to say, whether under their charter, the congregation could decide the point in dispute respecting the use of the German or English language, and if they had been deprived of their elective franchise, the court would restore it.

Allow me, in conclusion, seriously to appeal to you, what cause was there for this kind of hostile infuriated spirit? For I do say, that all history, sacred and profane, and personal experience teach us, that the most infuriated spirit that can agitate the breast of man, is mistaken zeal, a zeal, as in the language of holy writ, without knowledge. I presume, you as well as I, sometimes read "Young's Night Thoughts;" do you not recollect that when his daughter had died in France, and she was not permitted to be buried in consecrated ground under the idea that she was a heretic, it occasioned that line, "the sainted spirit petrified the human breast." The French people were a kind, obliging people, but their bigotry ren-



dered them inaccessible to the demands of pity and humanity. Therefore without impeaching those who wished to exclude English preaching, I do say, that it is most dangerous to suffer these proceedings to take their course unchecked, and it is necessary that an example should be set to the community, that to carry points in religion, they must not undertake to resort to force, and that, of course, they must acquiesce in the result of their elections, or appeal to the laws of their country. Bigotry has not one feature of this sentiment; the mildness of Christianity is assuredly its contrast; and in this country I am happy to observe, that though our people upon necessary occasions meet death with great coolness and intrepidity; in time of peace they are loth in spilling blood; they do not habitually talk of spilling blood; it is not a threat congenial to their tempers. They may occasionally quarrel as all men who have strong passions will; they may proceed to blows, but the idea of taking blood, because others differ from us in opinion, which has been repeated too often on this occasion, and hereafter, I hope never again will be, has never entered in their imaginations.

#### JUDGE YEATES' CHARGE.

JUDGE YEATES. Are the defendants, all or any, guilty of the conspiracy charged? A sense of religion is essentially necessary in all civilized governments. The hopes and fears of an hereafter are strong incentives to a virtuous course of life, and the most powerful restraints of vicious propensities. Without a firm belief in a future state of rewards and punishments, an oath or affirmation loses its most efficient sanction. In this happy country, the rights of conscience are inviolable and sacred. Every man is at liberty to worship the Creator of the Universe in his own way. The jury, therefore, will constantly keep in mind, that it is no part of their duty to decide either on the doctrines or discipline of the German Lutheran church, or whether the occasional use of the English language in the adoration of the Deity would conduce to the true interests of the church in general, and of

the youthful part of it in particular. For we freely disclaim all jurisdiction on these points. But we are called upon in our several departments to consider and impartially to decide, whether the laws of the country have been violated by all or any of these defendants. In every association of individuals, whether civil or religious, the voice of the majority fairly and honestly taken, according to their fundamental rules ought to prevail, where there is a difference of opinion amongst the members—still, the minority have a right to meet and consult together and use all lawful means to effectuate their honest purposes, in cases not prohibited by law: and the using unlawful methods with intent to defeat them of their first rights, is an offense known to our code.

The Lutherans are a respectable religious society in this state, they borrow their names and adopt the religious tenets of Martin Luther, one of the champions of the reformation, grounded on the celebrated Augsburg confession of faith. They were incorporated in this city by a proprietary charter on the twenty-fifth of September, 1765, which referred to their fundamental articles and was, on the third of March, 1780, confirmed and amended at their instance by an act of assembly. The Lutheran system having first taken root in Germany, it was highly natural and reasonable, that the emigrants from that country, and their immediate descendants, who professed that faith should use the language of that empire, which they understood, in their public worship: they would feel a predilection for it as the language of their forefathers. But experience teaches us, that after an efflux of time, their children would not feel the same attachment to it—with them it would not be their native tongue; hence arose unhappy divisions which rent the church, and which I deeply regret. The address of 1805 declares by a committee, that :they wish and seek no separation, they ask for the introduction of part of the instruction of the youth and of the divine service in the English language for the benefit of the congregation, and that in such a manner, that not the smallest offense be given to them who had opposed them theretofore."

Such also is the devout representation of Dr. Leib, the chairman of the committee, to the president of the corporation on the twenty-sixth September, 1815.

It has been said by some of the members, that "an English mode of worship cannot be introduced or permitted in their churches," upon the ground that they were a German Lutheran congregation and incorporated as such. To this I cannot accede. Imperious duty obliges me to declare my mind in this particular, explicitly. I consider the word "German" in the different instruments as mere matter of description. The principle was established by all the judges of this court in the case of the German religious society of Roman Catholics of the Holy Trinity church in the city of Philadelphia (in Spruce street). No religious tenet of the Lutheran congregation has been shown confirming the divine service of that church to the German language. No law contains such direction. To Omniscience all languages are known as well as the inward recesses of the human heart. The aspirations of a devout mind will not be overlooked by the Father of mercies. But the church itself has practically determined the very point. On the laying of the first corner stone of Zion church on the sixteenth of May, 1766, Dr. Wrangie delivered a sermon in the English tongue:—Although the congregation did not deem it eligible to introduce an alternate preaching in the German and English languages, yet on the twenty-fifth of February, 1806, at a meeting of the ministers, vestrymen and church-wardens, in order "to connect the congregation together in love, doctrine and faith," they solemnly agreed to cede and convey unto those who wished to have divine service in the English language, the church of St. Michael and the first burial ground, upon certain terms expressed in their resolution. No one can suppose that the church councils would have come into such a measure if they had doubted for a moment on the orthodoxy of worshipping the Supreme Being in the English tongue. As a matter of history, I can vouch that the Lutheran church in the Borough of Lancaster was consecrated fifty years ago by devotional exercises in the Ger-

man and English languages. I was present at the time and never heard more striking bursts of true eloquence, which went home to the heart, than those which issued from the lips of Mr. Whitfield, in the afternoon of that day. On this subject I may add, with propriety, that divine worship is now performed in Lancaster every fortnight regularly in the English tongue, and a discourse also delivered by the worthy gentleman who performs the ministerial duties of the Lutheran church.

I have been more full on this part of the subject, because I do not yet despair of the return of peace and harmony into the churches of St. Michael and Zion, if mutual forbearance and brotherly love are cultivated amongst its members. If there are any who oppose the English worship on conscientious scruples alone, I recommend to them to consult their bibles, confessions of faith and catechisms, and calmly and deliberately determine for themselves whether their scruples will bear the fair test of reason. Yet let me not be misunderstood when I assert as my private opinion, that devotion in the language of the country, is perfectly orthodox according to the tenets of Martin Luther—I explicitly declare that the councils of that church are the exclusive judges whether any other than the German language shall be used in public prayer or discourses, and alone can regulate their own discipline according to their sober discretion and prudence.

With these preliminary observations I proceed to the discharge of my immediate official duties. The question to be tried is, are the defendants or any of them guilty of the offense stated in either of the counts in this indictment? The law has been accurately laid down by the prosecutors.

It is contended on the part of the prosecution that the conspiracy here charged may fairly be inferred from the acts of the defendants, and from their expressions as well written as oral and that neither of them can rationally be accounted for on any other grounds—as to their acts and doings we are referred to the transactions of the different school houses belonging to the churches, before and on the day of the elec-

tion. On this part of the case, the evidence is very contradictory, and I fear cannot be reconciled. It is therefore the duty of the jury to consider with due deliberation and calmness the whole of the testimony, and assign to each witness the credit to which in their consciences and judgments they shall think him justly entitled. They will as far as possible, reconcile discordant testimony, but when this cannot be done, they will weigh the credit of each witness according to his reputation and station in the world, and the probability of his story. Many witnesses came before you under a certain degree of bias, as their opinions are made up either favorably or unfavorably to the introduction of divine worship in English into the churches. Jurors are the exclusive constitutional judges of the credibility of witnesses, and should perform this important branch of their duty with firmness and impartiality. They will make every due allowance for human passions and infirmity; they will not believe rashly and without reasons satisfactory to their own minds, that any witness has intentionally committed the horrid crime of perjury. They will call to their aid the manner in which the different witnesses have related their stories and consider on the one hand, their candor and ingeniousness, and on the other hand, whether they have shown backwardness and prevarication on their oaths.

The witnesses have detailed the different facts according to the impressions made on their minds respectively. It cannot be expected that I shall go through the testimony minutely which has cost us eight days in hearing, and which has been so fully commented on by the different counsel. The jury have heard those remarks and will patiently consider them, and give them such weight as upon a fair contrast of all the evidence collected together, they shall think them entitled to. But I feel it to be my duty to be more particular as to some of the witnesses. Andrew Busch, certainly, in a very improper manner, styled Christian Mannhardt the "Lord God of the Germans," as well as their "captain general." It remained doubtful in the evidence given for the state, who

made use of these expressions, but it is fully ascertained by Frederick Dreer, John Adam Herpel, Jacob Reily and Charles Keileck, that they must be attributed to Busch. John Piper the stripling of nineteen, paid little attention to his sacramental vow, when in conversation with Godfrey G. Cope on the day of the election, he connected together the holy Eucharist and an impious oath. It detracts also from the credibility of Frederick Dreer, that he has declared on oath that he had no conversation with Adam G. Harris, wherein he had said, that the English party might deem themselves fortunate in having escaped unhurt from the school house, or used any expressions to that effect. The direct contrary has been asserted by Harris and John Birmbaum upon their oaths, with all the peculiar circumstances attending it, and the observations of Mr. Geyer thereon, that the president should be informed of it. Let the jury judge, whether I have not ground for these remarks.

It has been urged by the defendants, that the riot and tumult, on the day of the election, arose from the unauthorized motion of George Witman, and that he alone was responsible for the consequences. But if there was a riot and breach of the peace on that day, whose source may be fairly traced to the unlawful combination forcibly to oppose the introduction of any other language besides German into the services of the church, the conduct of Witman will not excuse the defendants. Besides, if he really was ignorant of the appointment of inspectors by the president of the corporation, he could not be subject to blame, in proposing the question to the electors assembled; he showed the opinion of learned counsel in favor of the rights of the congregation. The resolutions of two hundred and sixty-three members of the congregation at the two school houses on the sixth and ninth of October, 1815, and entered in the minutes of the corporation on the eleventh of October following, contained the most intemperate language. It denounced in strong and highly reprehensible terms, every member of the corporation who was friendly to English preaching, as traitors to their

trust and unworthy of their confidence. If these remarks were well founded, it would be difficult to say, from what source the president would be vested with legitimate authority to discharge his official functions in the appointment of inspectors.

Upon this part of the case I will content myself with submitting to the jury, whether viewing the conduct of Witman in the strongest and most unfavorable light, it would possibly justify the acts and doings of those who have been styled the German party.

I come next to the writings and sayings of the defendants, which are urged as further overt acts from which the unlawful agreement may be collected. The German petition, which was on the twenty-sixth September, 1813, addressed to the corporation with one hundred and ninety-five signatures, forms a highly important part of the evidence, and merits great consideration. The Lutheran hymn book, several German dictionaries and three learned gentlemen (two of them Reverend clergymen) have been brought forward to aid us in our translation. The passages supposed to be exceptional on the part of the state are thus rendered into English.

"We have firmly bound ourselves before God and solemnly to each other, to defend with our bodies and lives our German divine worship against every attack, and to oppose with all our power the introduction of a strange language into our churches; we further pray you to make such an arrangement, that the opponents of the German language and German divine worship may never be permitted to meet in our school houses for the attainment of their base views. Be ye assured that we will with all our powers, yea, with body and life, support you dear fathers and brothers, in all such measures as may tend to the welfare, the advancement and to the perfecting of our German divine service."

That this is the plain, literal translation of the original, is denied by no one. The dictionaries show that "*mit Leib und Leben*," in the German tongue, signify in English, "with body and life." But it is said by Francis Varrin, Dr. Helmut and Dr. Collin, that according to the idiom of the German language, the words mean nothing but great earnestness

in a cause supposed to be good—that they convey no threat, nor imply anything unlawful or criminal— and that they do not pledge the signers to any improper or illegal enterprise. They said that the word “mit” or “with” refers to the writers or speakers, and is contradistinguished from the term “by.” I pay great deference and respect to the opinions of these learned men, in a language they must be supposed to understand; and I am disposed to acquiesce in their sentiments, that these words in a figurative or metaphorical sense may fairly convey the idea they have assigned to them. But in this paper, the verbs, defend, oppose and attack are super-added, which imply activity and force, if the same become necessary by subsequent events. It is moreover perfectly clear to everyone, that we may derive most important lights in our researches from the previous as well as subsequent conduct of the defendants and their associates, who form what is often called the German party. By analogy we may adopt the expressions of pious and Reverend divines and call such conduct the context. Words may be innocent or indifferent in themselves standing alone, which may be susceptible of a very different construction, when compared with other expressions, as acts of the speaker. So, of a shake of the head, or shrug of the shoulders without the utterance of a single expression. Let the papers then be examined with these cautionary remarks. Charles Eberle proves that it is the handwriting of Christian Mannhardt, who is said to be a man of warm and ardent temper. From the pen of such a man, we cannot reasonably expect a mere milk and water composition, breathing such language as a mother would use to a child. Alderman Geyer proves that the words, “*mit Leib und Leben*” were underscored in the original address, when it was presented to the corporation. They were therefore deemed to be energetic terms to which the attention of the readers was particularly solicited. The bulk of the signers were plain men unused to figures of speech, who would adopt the expressions in their literal and natural sense. Mannhardt was the leader of those who were attached to the per-



formance of divine service in the German language exclusively, and delivered orations against their adversaries. He boasted that he had stirred up all the people at Camptown by a speech he had addressed to them, that he had it in his power and would do it again. To John Uhler, he says, "not half an inch must be given, or blood must flow." To Charles Eberle he repeats expressions of a similar nature. John Derneck, tells Andrew Busch, "before the English language shall be introduced into the church blood shall flow," and uses the same words again to Henry Burkhardt, adding, that they would do as had been theretofore practiced in the German church in London, have rum and beer in the church and fight like game cocks, or bull dogs. Christian Schmidt also threatened George Kreps, that if his companions would not come in peaceably, they would follow the command of our Saviour and smite with the sword. I forbear to repeat the expressions of Valentine Haglee, John Schlag, Schwartz, Kean and others, whose conduct and sayings are admitted to have been highly intemperate and blameable. The German petition was prepared and signed with several names prior to the petition in favor of English preaching. They state therein, that they had firmly bound themselves before God and solemnly to each other to defend with their bodies and lives their German divine worship against every attack, which general word includes a lawful as well as unlawful attack and to oppose, etc.

To the jury it belongs to determine, whether they consistently with good conscience can say on their oaths, that force or violence was not intended to be used, if they should see a fit occasion for it, taking into view the facts preceding it, and all the attendant circumstances. It is of no avail, in what manner the original petition was obtained, or that the defendants were ignorant of the extent of the legal offense they had committed. Every man is bound to know the laws of his country. The fact of conspiring need not be proved, but may be inferred from circumstances. Establish the concurrence of the parties to do the act, it is a conspiracy, although no act

be done, and even though they were not previously acquainted with each other. When an act is done by one, the law imputes it to all, if done in pursuance of the illegal combination. This I explicitly lay down to be the laws by which the jury should be governed. Neither they, nor I, have anything to do with the consequences of a correction. The constitution of our country has placed this power in other hands. Between fifteen and twenty of these defendants have courted this prosecution, as has been proved by the clerk of the mayor. Be it so; they have chosen and spread their own bed, and must abide the consequences. In our several departments we act under the sanction of an oath, and are bound by the most imperious duty to do equal justice to the commonwealth and the defendants. Let each of us then go straight forward, looking neither to the right nor the left. Let each of us endeavor to inform our judgments and act impartially according to the dictates of a pure conscience. I will only add, if the jurors on mature deliberation shall have any reasonable doubts of the guilt of the defendants, or any of them, it is their duty to acquit them; if they have no such doubts, they are bound to convict. To convict the innocent or acquit the guilty, both equally are abominations to the Lord.

To the calm and temperate decision of the jury, I cheerfully commit the cause.

#### THE VERDICT.

The *Jury* returned a verdict of *Guilty* against all the defendants.

The verdict of the jury was affirmed by the Supreme Court in December, 1816. See 3 Serg. & Rawle Reports, p. 3.

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## THE TRIAL OF JOHN FONTANA FOR DISLOY- ALTY, BISMARCK, NORTH DAKOTA, 1918.

### THE NARRATIVE.

Rev. John Fontana was the minister of a Lutheran church in the town of Salem, N. D. It was a German community, and the German language was used in the church which had received some years before the gift of a Bible from the kaiser.<sup>a</sup> Fontana, a native of Germany, had become an American citizen in the year 1898, renouncing all allegiance to Germany and its ruler, and swearing to bear true faith and allegiance to the United States. But when the German army invaded France and Belgium in 1914, the minister let it be known that he was a warm admirer of German doctrines and German methods. He preached to his congregation in German and told them what a noble war the kaiser was waging; he prayed in German for the success of the German army, and he defended the sinking of the Lusitania. When in April, 1917, the United States entered the great contest, he refused to join the Red Cross or to buy Liberty Bonds; Old Glory was not to be seen in or on his church nor was the Star Spangled Banner heard in the services.

In February, 1918, he was indicted under the Espionage law for interfering with the military and naval forces of the United States, for causing insubordination and mutiny, and for obstructing the draft. The indictment charged that he had said, that President Wilson was a man who, after securing his election on the slogan, "he kept us out of war,"

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<sup>a</sup> A capital "K" is hardly due to that kind of a "kaiser" who swaggered with his big sword and mustache and army two to one to his opponents, and who, from the rear, in a safe place, ordered his soldiers to destroy churches and works of art and kill old men, women and children, but just as soon as he began to be whipped, instead of standing by his men to the last, ran off to Holland with his precious son, like a couple of cowardly negro chicken thieves.

turned around and by the use of his high office of President, whipped the members of Congress into line and secured the authority to enter into the war with Germany; that he felt proud of the noble fight the Germans were making; that the sinking of the Lusitania was justified and that there was no reason whatever for the United States taking up arms against Germany; that he frequently as a minister prayed for the success of the armies of Germany over the armies of the United States; that he told people that he did not want to subscribe for Liberty Bonds because it would tend to encourage the administration; that the President was using the same method of threats to force every bank within the United States to subscribe to Liberty Bonds; that the purchase of Liberty Bonds would give the country more money to fight Germany and thus prolong the war; that he desired the success of the enemies of the United States.

His defense was that though he had said some of these things, yet it was before we entered the war, and that it was natural for a German to be on Germany's side. But he claimed that after the 15th of April he had said nothing disloyal and done nothing which had influenced any man of draft age to resist the draft. But the jury found him guilty and the Judge sentenced him to imprisonment for three years, in a scorching address upon the attitude of many German-Americans toward the country they had chosen to live in and whose interests they seemed never to have regarded.

### THE TRIAL.<sup>1</sup>

*In the United States District Court, Bismarck, North Dakota,  
July, 1918.*

HON. CHARLES F. AMIDON,<sup>2</sup> *Judge.*

*July 29.*

On February 27 John Fontana was indicted for a violation of the United States Statute known as the Espionage

<sup>1</sup> "Transcript of record. United States Circuit Court of Appeals, Eighth Circuit. No. 5295. J. Fontana, plaintiff in error, vs. United States of America, defendant in error. In error to the District Court

Act (June 15, 1917),<sup>a</sup> by falsely stating on or about December 19, 1917, that President Wilson was a man who after securing his election on the slogan "He kept us out of war" turns squarely around and by the use of his high office of President whipped the members of Congress into line by threats of exposure of this one and that one and in this way secured the authority to enter into the war with Germany; that he felt proud of the noble fight the Germans were making in the war; that the sinking of the Lusitania was justified and that there was no reason whatever for the United States taking up arms against Germany; that he frequently and as a minister of the German Evangelical Church prayed for the success of the armies of Germany over the armies of the United States, and stated to his congregation, and to divers persons whose names are unknown, false and injudicious statements

of the United States for the District of North Dakota. Filed October 11, 1918. St. Louis, Mo."

"United States Circuit Court of Appeals, Eighth Circuit. No. 5295. J. Fontana, plaintiff in error, vs. United States of America, defendant in error. Brief for defendant in error. Melvin A. Hildreth, U. S. attorney, John Carmody, assistant U. S. attorney, attorneys for defendant in error, Fargo, N. D. Filed Apr. 11, 1919; E. E. Koch, clerk."

"United States Circuit Court of Appeals, Eighth Circuit. No. 5295. J. Fontana, plaintiff in error, vs. United States of America, defendant in error. Writ of error to District Court of the United States, District of North Dakota. Hon. Charles F. Amidon, presiding. Mr. B. W. Shaw, Mandan, N. D., Mr. John Knauf, Jamestown, N. D., attorneys for plaintiff in error. Hon. M. A. Hildreth, U. S. district attorney, Hon. John Carmody, assistant U. S. district attorney, Fargo, N. D., attorneys for defendant in error. Filed Feb. 28, 1919; E. E. Koch, clerk."

"United States Circuit Court of Appeals, Eighth Circuit. No. 5295. J. Fontana, plaintiff in error, vs. United States of America, defendant in error. Reply brief of plaintiff in error. John Knauf, Jamestown, N. D., and B. W. Shaw, Mandan, N. D., attorneys for plaintiff in error; M. A. Hildreth, Fargo, N. D., attorney for defendant in error. Filed Apr. 11, 1919; E. E. Koch, clerk."

<sup>a</sup> AMIDON, CHARLES FREMONT. Born Clymer, N. Y., 1856; A.B. Hamilton Coll., 1882; went to Fargo, N. D., 1882; admitted to bar, 1886; member comm. to revise code and statutes of N. D., 1893; U. S. Dist. Judge, Dist. of N. D., since 1896.

<sup>b</sup> See the statute in the judge's charge, *post.*, p. 946.

as aforesaid; that he did not want to subscribe for Liberty Loan bonds because it would tend to encourage the administration; that the President was using the same method of threats to force every bank within the United States to subscribe to Liberty Loan bonds; that the purchase of Liberty Loan bonds would give the country more money to fight Germany and thus prolong the war; that he desired the success of the enemies of the United States.

The indictment had three counts. The first charged that his false statements were made "with the intent to interfere with the operation and success of the military and naval forces of the United States, and to promote the success of its enemies, to the injury of the service of the United States." The second count charged that the false statements "did willfully cause and attempt to cause insubordination, disloyalty, mutiny, and refusal of duty in the military and naval forces of the United States, to the injury of the service of the United States." The third count charged that in so making the said false statements as aforesaid, "the said J. Fontana did willfully obstruct the recruiting and enlistment service of the United States, to the injury of the service of the United States."

*M. A. Hildreth*,<sup>4</sup> District Attorney, and *John Carmody*,<sup>5</sup> Assistant District Attorney, for the Government.

*B. W. Shaw*<sup>6</sup> and *John Knauf*<sup>7</sup> for the Prisoner.

<sup>4</sup> **HILDRETH, MELVIN ANDREW.** Born Watertown, N. Y.; educated in public schools and Whitestown Academy; removed to Dakota in 1888; city attorney of Fargo two terms; colonel N. D. National Guard; life member Nat. Rifle Assn.; served through Spanish-American War and Philippine Insurrection; judge advocate, Manila, 1898; asst. U. S. dist. attorney, 1913; U. S. dist. attorney, 1914.

<sup>5</sup> **CARMODY, JOHN.** Born 1854, Granville, Wis.; educated in public schools of Wisconsin and Minnesota; admitted to bar (Waseca, Minn.) 1880; practiced law in Waseca 5 years and in Hillsboro and Fargo, N. D., 34 years. Has held the following public positions: Justice of peace, Waseca, Minn.; judge Municipal Court of Waseca; city attorney and mayor of Hillsboro, N. D.; State's atty. Traill Co., N. D.; judge Supreme Court of N. D.; member State board of control of penal and charitable institutions of N. D.; assist. atty. gen. N. D.; asst. U. S. dist. atty. N. D.

<sup>6</sup> **SHAW, BENJAMIN W.** Born Burlington, Wis., 1858; studied law in office of Winslow & Bronson, Racine, Wis.; admitted to Wis. bar. 1881; removed that year to North Dakota, where he has practiced (Mandan) for 35 years. Has held the offices of asst. chief clerk of

A demurrer to the different counts of the indictment was overruled by the Court, whereupon the *prisoner* pleaded *not guilty*.

July 30.

The following *jurors* were selected and sworn: F. S. Rickbiel, F. W. Vail, Leon Mauer, Geo. Leonhardy, O. B. Johnson, Geo. A. Burns, C. E. Blackorby, I. O. Sauter, C. E. Castle, P. G. Vildmo, R. C. Palfry, Albert Bell.

*Mr. Knauf*. We ask that the prosecution be required to elect upon which of the several charges and crimes in the different counts of the indictment it will depend for a conviction, and also if any charge is to be made from December 19, 1917, which is the date we are prepared to meet,

JUDGE AMIDON. The motion is denied. It may be understood that an exception will be saved to all rulings. That is the uniform practice in this court. It will not be necessary to prove the offense to have been committed at a specific time named. If it is sufficiently near to be embraced within the charge in the indictment as "on or about," that would be in any case sufficient, and then evidence of other instances is admissible as going to the matter of intent alone.

*Mr. Hildreth*. Gentlemen, the indictment which you have just heard read shows what the charges are against the prisoner. In the first count he is charged with willfully making and conveying false reports and false statements, contrary to the United States statute called the Espionage law. What he said and did we shall show you by credible witnesses. It also charges that, as a minister of the German Evangelical Church, he preached for the success of the armies of Germany over the armies of the United States, and stated to his congregation and to other persons false and injudicious statements, and that he made them with the intent to interfere with the military and naval forces of the United States and to promote the success of its enemies. The second count charges him with the same language to willfully cause and attempt to cause insubordination, disloyalty, mutiny, and refusal of duty in the military and naval forces of the United States. The third count charges that he did willfully obstruct the recruiting and enlistment service of the United States.

We shall prove to you that this man preached to a German congregation of from 50 to 200 people. It was in a German community. We shall prove that prior to the breaking out of war between this Government and Germany he had been solicitous for the cause of Germany as against the Allies; and that he was endeavoring to spread

State House of Representatives, dist. atty., State's atty. Morton Co., president State bar assn. and city atty of Mandan; is at present county judge.

<sup>1</sup> KNAUF, JOHN. Born Jackson County, Mich., 1868; studied law, Univ. of Mich.; admitted to bar (Mich.) 1892, North Dakota 1894; practices at Jamestown, N. D.; has been judge of county court and State Supreme Court, N. D.

the seeds of discontent and sedition in that community we shall prove beyond any doubt. If he ever did anything which could be considered as loyal to his adopted country it was done after these proceedings for disloyalty were commenced against him.

This human character that you have before you is a German character. He has prayed in the German language and preached and sung in the German language. His soul is a German soul, while his body is here in America. Here he has enjoyed constitutional liberty under a free government since this war has commenced; but his whole labor has been in one direction, that of aiding and abetting the land of his birth—Germany. He preached these same principles in the church under the guise of religious instruction, the same principles that were preached by the German propagandists in this country before the war.

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#### THE WITNESSES FOR THE PROSECUTION.

*J. Henry Kling.* Live at New Salem; am cashier of the First National Bank; know Mr. Fontana since he came to New Salem about nine years ago; he is a minister of the Gospel of the German Evangelical Church; there is a large German population at New Salem. During October, November, and December there were advertisements posted about the town calling for enlistments in the army and navy. There were many young men of the draft age in New Salem during this period. Had a conversation with defendant on the day that was set aside by the Governor of North Dakota as a holiday in all banks for the drive of the second Liberty Loan. I went up to his house and asked if he would put his name down on this list, showing him that I had already been to the schoolhouse and had all the teachers heading the list, and I wanted to have the preachers follow the teachers and put his name down for a Liberty bond; that I would have no trouble after that to sell any of the members of his congregation. He said he didn't want to do any-

thing to use his influence to help out the present administration in this war, because President Wilson was elected on the slogan "He kept us out of war," and then he used his power as President, his influence as President, to put us into war by threatening exposure of certain Congressmen. I asked him how he could expose any Congressmen. He said he had influence on all of them; all he had to do was to tell this man or that man, Members of Congress, that he would expose them to the light, and in that way he forced them to take a stand with the administration—forced the country to war—and the majority of the people were against war. For that reason he felt he did not want to buy any Liberty bonds or use his influence that way, because it would just tend to prolong this war. I noticed the picture of the kaiser on the wall and asked him if he was acquainted with the kaiser, and he said he knew the kaiser to be a man of peace; that he kept peace in Germany for over 40 years, and at the present time there was no need for any war;



that the kaiser had offered peace on several different occasions, and all they had to do was to accept those terms and there would be no war. He said, "Why don't they accept his terms?" He had the manner of a man who was very much—just as I have said—opposed to the war that the United States was carrying on, and impatient with the administration. He said that the sinking of the *Lusitania* was a humane act on the part of Germany, because of the fact that there were munitions on board, and by the sinking of the *Lusitania* it saved a lot of lives in Germany, and we would do the same thing. One of the things I remember especially that he said was, "I am very proud of the fight the German people are making; can't help but be proud of it." As I left his house I asked him if he would not sign, and he said, "No, not now"; that we were entirely in the wrong, and for that reason he did not want to lend his influence to something of that kind. I said, "It might help you if you will come out and listen to Mr. Koenig, who comes here next Saturday to give a talk. He will speak in German." He says, "I would rather listen to a man who talks in the English language, because if any man is educated in Germany and speaks in the German language, and holds the view that the present administration is right in this war, I don't believe the man is sincere, and for that reason I would not want to listen to him." He said that he did not want to buy bonds because it would help to fight Germany and prolong the war—feed the war

and prolong it. Mr. Fontana did not interfere with my joining the army or navy or the aeroplane service. That subject did not enter into our conversation at all.

*Cross-examined.* Fontana did not say that the United States was the best security there was; or that he could not buy United States bonds because he did not have the money or the means. Am 38 and did not come within the draft registration. I don't remember that he said anything against the draft law. He brought up the fact that Germany had a better government than this country. That is one of the things he talked about that I had forgotten. He liked their system of government better than the system we had here.

*D. A. Podoll.* I live at New Salem; am assistant cashier in the Farmers & Merchants Bank. Defendant is one of the directors. I attended his church; am of German descent; speak the German language and understand it. A bible, I understand, was received from the kaiser some years before I came to New Salem. I used to teach a Sunday-school class there, even after April 6, 1917. On a Sunday in August, 1917, I called up Mr. Fontana right after church, over the telephone, and said, "I understood you to say in your sermon today that as the Lord was with his people, the children of Israel, and helped them to overcome their enemies, so He gave the German people ways and means to stand off their enemies of the world." He paused a few seconds and then said, "Yes, I believe I did say that." He started to laugh in a way that

made me feel he felt it strange I should question what came from the pulpit.

*Mr. Knauf.* I move to strike out the testimony in regard to his action and the laugh as being a mere conclusion of the witness, not a statement of facts, being over the telephone.

The COURT. The motion is denied.

*Mr. Podoll.* I said I was just as positive that it was the devil that enabled the Germans to devise all these instruments of torture. He said, "Maybe you are right, but I think it is God." I said I couldn't see how that accorded with the teaching that we had a loving God. He said, "God can be loving and still be in this war." Asked whether he believed that the Germans were the chosen people, he answered shortly, "I didn't say that." "But," I said, "you do believe that the Germans are in the right and all the rest of us are in the wrong?" He said, "I do." I told him that was all I cared to know, and hung up the receiver. Was present when he preached that day in German. There was a fair-sized congregation, say, 225. There were young men there between the ages of 21 and 31. In the sermon he said, "Just as the Lord was with his people, the children of Israel, and helped them to overcome their enemies, so he gave the German people ways and means to stand off their enemies of the world." He prayed for both our land and the Fatherland, and that peaceful relations might again be restored; asked blessing for our Congress and Government in general; among other things that

follow in the regular church service, asking a blessing for the community and crops. Another Sunday his prayer began with a blessing for the old Fatherland and our new Fatherland, asking that peace between the two might not be broken; that bloodshed between them might be avoided, and that those who would break off peaceful relations be hindered in their efforts. Am I permitted to tell the tone of voice in which they were uttered?

*Mr. Hildreth.* Yea.

There was a feeling of utter disgust and hatred towards some certain individuals who were responsible for the breaking off of those peaceful relations.

*Mr. Knauf.* We object to this as a conclusion and not a statement of facts.

I noticed after the middle of July, when I got back from my vacation, that that old feeling appeared to be entirely gone and America came first in the prayers and then the Fatherland, and merely a petition that the peaceful relations might soon be restored; but never in the prayers did I hear anything about the righteousness of the cause for which America was in the war, nor any reference to the victory for our cause and our Allies, or anything to that effect.

Early in April, 1918, he said he would like to have the Sunday school teachers meet that afternoon at the church. I went up in the afternoon. There were present four young women and one old gentleman, Mr. Nichols. Mr. Fontana said there was some objection to the use of the American language in the Sunday school; it was being used

entirely too much. I said I supposed I had the only class that used English almost entirely; and then the girls admitted they used English quite a little; that they had the children read from the German readers and then had them explain it in the English language. We wanted to know why there was objection to the use of English. He went on to state that the elders of the church didn't like it. One of the lady teachers said she thought this was a poor time to suggest anything like that when the German language was being put out all over. He said that was only in places where they didn't know any better. I asked if this was a move on the part of them to get rid of me as a Sunday-school teacher; if so, I would be perfectly willing to step out. He said that was not the case; that the parents wanted the children to learn German. I said it looked to me that the Sunday school was more a place to teach the German language than religion. He assured us that was not the idea. Some of the teachers said that we as teachers were not able to handle the German as well as they thought they ought to, to do the instructing entirely in German; and he suggested that they come over to his house and he would give them some reading material in German with reference to Sunday-school work, and we could gather at his house once a week and we would go over the work as a body. I never did. I think some of the teachers went.

The latter part of February, 1918, several of our boys were leaving for the training camp,

so it was suggested it would be nice to have a special service by the Endeavor society, and we did have a special service, and the pastor was asked to give prayer. In that prayer he asked the Lord's blessings upon the boys who were going to camp; asked that He take care of them, keep them, and also asked for an early, honorable peace. On Sunday morning I said we had thought of decorating the church with flags and bunting, and I asked whether there would be any objection to our doing that during the afternoon. He said the church had its regular evening church service first, which would be about 7; that would mean that our Endeavor would be at 8, and that the older people did not fancy the idea of having decorations like that in church for their service; and he cited an instance where flags or bunting had been used in connection with some funeral some few years before that. I said that rather than cause any bad feeling we would arrange our decorations so that we could put them up at the close of the regular evening service, and he said that would be all right and would be appreciated. I left the Sunday school because it was merely one incident placed on another. I was disappointed over that flag affair and the Sunday school affair regarding the teaching of more German. And the Sunday before I quit we got into a little wrangle at Endeavor. Someone made the statement we could not believe all those little things that were told in the papers, and Rev. Fontana said, "Don't you remember what Mrs. Rudd said at one of those patri-

otic meetings at the school-house?" And he went on to say that she said we could not believe 90 or 95 per cent of the news that we found in our newspapers. I said that was not true; that she was talking of conditions in Russia and had explained that the Russian news was doctored up to suit the Germans, and the news we got over here was of that kind. Then the Reverend said, "Well, she did say that." And that settled the argument, and the next Sunday I handed in the books and told him I turned the class over to him.

*Cross-examined.* As near as I can find out, my father's ancestors were of Polish stock. Don't know this sermon I have referred to was on the topic of temptation.

*Mr. Knopf.* Didn't he say, in substance, that we should pray lest we might yield to temptation. And in that sermon didn't he say: "Germany, in her fight against a great number of enemies, has had a weapon which enabled her to hold out until now, but God has given the Christian a weapon with which he can defeat all temptations at all times, namely, the prayer. The Lord says, 'Watch and pray that ye enter not into temptation. The spirit, indeed, is willing, but the flesh is weak'?" I wouldn't say. Would you say that he did not? I told you just what I said to him over the phone, as I understood it, and he admitted that "I guess I did say that." In that sermon, didn't he use the following language: "We therefore can be preserved from evil by prayer to God for His help and assistance"? I have heard that ex-

pression before, but I would not say it was in that particular sermon. Didn't he at that time say that the prayer is the weapon which is always efficient against all temptation; let us therefore practice daily with this weapon that we may become skilled in the use of it? I have heard that expression before, but I would not say it was in that particular sermon. Didn't he in that sermon say: "Let us pray God daily for his assistance against the daily temptations that we may not fall, but that we may conquer, and he who conquered through faith will be saved"? I would not say I heard that in that sermon, because that is brought up in so many sermons. Didn't he at that time say: "May our patient and merciful God help us that we may conquer at last and be victorious"? I don't remember hearing that statement. And in the Endeavor meeting, didn't he pray that the boys should do their duty, and didn't he instruct them to do their duty? Instruct them?—I don't know that I would say that he did.

*The Court.* What did he say on that subject about the boys doing their duty? I don't remember. Did he make any remarks on the occasion of this service other than his prayer? Not that I remember.

*Mr. Knopf.* Isn't it a fact that during the months of July and August and September and October and November and December, 1917, Rev. Fontana frequently in his sermons spoke about the United States, and in his prayers prayed for our Government and

our President and our Congress and our officers?

*Mr. Hildreth.* I object to any statements that were made after the return of the indictment.

The Court. The objection is overruled.

*Mr. Podoll.* It seems to me, regarding those prayers, that it was a kind of routine part of the regular prayer that was used in the church service, as near as I can remember. Nothing that Mr. Fontana said prevented me from volunteering or going into the service of the United States.

*John Schadel.* Live at New Salem. I am a German—no, I am American. I am a farmer. Was in church between April and May 29. Mr. Fontana said, "I pray for our old Fatherland, that You would give him victory over his foes and destroy and shatter all who wants his evil." He made that prayer every Sunday while I was there.

*Cross-examined.* He prayed for the President and Congress and this country.

*Mrs. Nellie Diets.* I had a conversation some time in September, 1917, with defendant at my house about the Red Cross. He said he did not believe in the Red Cross. It was right after the first meeting we had about the Red Cross, when it was first organized; I didn't happen to be there at that meeting, and Rev. Fontana and his wife came over to my house several days later and I was anxious to hear about the meeting—what they did, whether they organized. He said he wasn't over there; if he had been, something would have happened, something would have

turned up. I asked him, "Why, don't you believe in the Red Cross?" He says, "No; I don't believe in it." Then I asked him why he didn't believe in it; I told him I thought it was good work; and he says, "We are at war with Germany; they don't need our German money." He said they didn't want our nurses that were born in Germany, and they didn't need our German money, either.

*Mr. Knauf.* Didn't he say it appeared from an article of Mr. Davidson, one of the American Red Cross agents, that the money from the United States would be used exclusively for the Allied soldiers, and not for soldiers of the German Empire falling into their hands as prisoners, and that he did not believe that that was right, but that it should be used for all soldiers falling into our hands or the hands of the Allies? No, sir.

*Miss Otte.* I am at present working on the New Salem Journal; they call me a reporter. Recall attending defendant's church and hearing a sermon by him in July or August, 1917. He spoke of the German submarine; said God specially blessed the German people, because they had these submarines as a means of warfare. It was a mixed congregation of men and women; there were young men between 18 and 45; there were fathers and mothers there who had sons and within the ages of 18 or within the ages of 21 and 31, and also those who had sons between the ages of 18 and 40.

*Cross-examined.* Do not pretend to know the persons who were there on that Sunday; could

not name them. Do not remember Mr. Fontana saying that God had given us Christians a weapon against all temptation, namely, the prayer, with which we may defeat all temptation. Could not state whether he said in the course of his sermon: "The Lord saith, 'Watch and pray that ye enter not into temptation; the

spirit, indeed, is willing but the flesh is weak.'"

*Mrs. F. G. Wainwright.* My husband and I are members of Mr. Fontana's church. The Bible that was presented to the church has been used there in the service ever since it was presented. Have not talked to Mr. Fontana about the Bible since war was declared.

### THE WITNESSES FOR THE DEFENSE.

*Herman Kroeger.* Live in New Salem; have been a farmer; am retired now. Am 77; was born in Prussia; came to the United States in 1857. From '61 to '65 I was in the western army in the cavalry. Am a member of Rev. Fontana's church; am president of the board. Attended church between April 6, 1917, and 1st of March, 1918, pretty regularly. He usually used a service book after the sermon. Generally he prayed for the President of the United States and also, specially, when Congress was in session, he prayed for Congress also. From the time the United States got in the war with Germany, in the church before the congregation, he never prayed for the success of Germany. He prayed for peace between the two countries.

*John Christainson.* Am an elevator man and farmer; have lived in this country since April, 1883. Was born in Schleswig-Holstein; came from there to this country. Attend Mr. Fontana's church at New Salem. Remember the first or second Sunday after Easter. The war was declared on Good Friday, as we all know. The Reverend said in his sermon, "Now, you know war is declared between

the United States and Germany, and we, as American citizens, according to our oath when we took out our citizenship papers, we should stand back of the President of the country." That is about the substance of the remarks. In his prayers he said something like this: "Almighty God, we ask Thy blessings on our President and Congress; give them wisdom to lead the country so that it will be for the best welfare of its citizens; see that this bloodshed will stop pretty soon, and that all nations will see their sins and repent of them." That is my own translation. He was speaking in German. He never during any of those times asked God to bless Germany or make it successful or prayed to give the Germans victory over its foes and destroy and shatter all who wished Germany evil.

*Cross-examined.* I paid close attention to his prayers after the war was declared, because before the United States and Germany came to war the minister had prayed for the success of Germany's armies. After war was declared his manner changed in favor of the United States, to my notion. Have not seen the pie-

ture of the kaiser on the walls in his house since 6th day of April.

*Fred Lenhart.* Live at New Salem. Am fifty years old; a contractor and builder. Am a member of the German Evangelical Church, presided over by the Rev. Fontana. Have a son in the army who attended the church, too; he is over on the other side. Heard in church the defendant say our new Fatherland was in the war with the old Fatherland, and that we are in duty bound, upon our oath as citizens, to support our new Fatherland in every respect. He said, "Bless our President, and give him wise counsel; also our Congress," and he prayed that God Almighty may subdue this terrible war and stop the bloodshed, and convert all humanity unto him; and prayed for our new Fatherland, and that peace may reign between the new and the old Fatherland. He said that, like Germany has a weapon with which they held off their numerous enemies until now, so has God given every Christian a weapon to withstand sin and temptation. He did not say that God had blessed the Germans by giving them the submarine as a means of warfare.

*Mr. Hildreth.* You had seen the kaiser's picture in defendant's house, hadn't you? Yes, sir. After the 6th day of April, 1917? I don't know whether it was after the 6th day of April or not. You didn't keep track of the time, I suppose. It was on the wall, wasn't it, when you saw it? Yes, sir. Quite a large, framed picture? No, sir.

*To Mr. Knaut.* I think about thirty of the young men who attended church during parts of those sermons or prayers have now gone into the United States Army in the present war. There were six volunteered with my own son, but they were not all from the congregation. Do you know how many? Three of four. That you remember? Yes, sir. The church has a service flag for those boys.

*Mr. Hildreth.* That service flag has been put up since the grand jury returned the indictment against this defendant, has it not? I don't know when the indictment was returned. On the 27th day of February, 1918. That service flag has been put up in that church since that date, hasn't it? I don't know.

*August Kreidt.* Live close to New Salem. Am a farmer. During spring and summer of 1917 I heard Mr. Fontana pray in church; heard his sermons also. He said about this way, "Bless all nations of the earth, especially our land and nation and our government." He prayed for the President to give him wisdom, and for Congress and all the other officials. He said that "Prevent bloodshed, and that there would soon be peace again between our new and our old Fatherland." He said: "Germany has a weapon over her enemies which enabled her to hold out until now. God has given a weapon to the Christian to defeat temptations at all times, which is the prayer." Do not know what weapon he was referring to. Heard him say nothing to the effect that God

blessed the German submarine as a means of warfare.

*John Riebedorf* (an interpreter sworn). I am sixty-five, and have lived at New Salem thirty-two years; born in Germany. Came to America in 1882. Have taken out citizenship papers in this country. About Easter time heard Rev. Fontana say, We are now at war, and as citizens of the United States we should co-operate with it so that we win the war. He prayed that we now were in war and we should stand by our country so we would win the war. One of my sons is in France. He was in the draft, but he enlisted here in Bismarck.

*Wilhelm Zarndt* (an interpreter sworn). Live at New Salem since 1883; born in Germany. Have taken out citizenship papers. Belong to the church that Mr. Fontana preaches in. Was there Easter Sunday, 1917. He prayed that God turn this terrible war away from us, and turn everything to the best, and that bloodshed would be stopped. He has a prayer book, and out of this he prays every Sunday for the President, and for the Congress, and for the officers of this country.

*Cross-Examined.* As soon as

we entered the war he started to pray. Prayed for good harvest, prayed for the sick, and prayed for those who were to be confirmed. He prayed that peace may be with the old Fatherland and the new Fatherland, that God may give this, grant this peace.

*Henry Voitel* (through an interpreter). Live at New Salem. Am a member of the church of Rev. Fontana; attended his church in 1917. He said, while we were in this country and were citizens of this country it was our duty to stick by our country, and it was his duty to tell us that. He prayed for the President, and for the Congress, and prayed to God that he may give us victory.

*Cross-examined.* Have lived twenty-nine years in New Salem. Have always spoken the German language. Have four daughters. When they were living at home, always speak the German language with them.

*Fred Grube.* Am a farmer and live near New Salem. Was born north of New Salem. Am a member of the church of defendant. After April 6, 1917, he prayed for wisdom for the President and our Congress; also for the army and navy.

*Mr. Knauf.* Were you ever in any way influenced against the United States Army and Navy by anything that Rev. Fontana said after we were in the war with Germany?

*Mr. Hildreth.* We except, same reasons as above.

*Mr. Knauf.* At this time we offer to show by the witness that the Reverend Fontana did not at any time while he was attending at that church, after we got in the war with Germany, after the United States and Germany were at war, say anything to him which influenced him in any way against the army or the navy of the United States, or which in any way interfered with the United States Army and Navy, or which in any way caused them to be obstructed in the enlistment



or recruiting service, or the draft service, or the army or navy of the United States; that he said nothing that caused insubordination, disloyalty, or mutiny, or refusal of duty, in the United States army or navy.

*Mr. Hildreth.* The government objects on the grounds that it is incompetent, irrelevant and immaterial, and calls for the conclusion of the witness, and not a statement of fact, and not within the issues.

The COURT. The objection is sustained.

*Christ Gaebe.* Live near New Salem. Do general farming Am a member of the church of the defendant. Remember about

when the United States declared war. Attended church after that time.

*Mr. Knauf.* Did what he said in his prayers or at church, what you heard him say, in any way influence you against the army or navy of the United States in any way, shape or manner?

*Mr. Hildreth.* Objected to.

The COURT. The same ruling which was made in regard to the former witness will be made as to this witness.

*Mr. Knauf.* Now, I have a number of witnesses to whom I would like to put the same questions, who have been called from this same church, and I presume that we might have the ruling, so that it would not be necessary to encumber the record with each of the witnesses.

The COURT. I do not see the necessity of your reading that formula to a succession of witnesses. You have made a comprehensive offer, and have the ruling of the court upon it.

*John F. Gaebe.* Live near New Salem; business, farming. After we got in the war I attended defendant's church. Heard him pray for the President and Congress. He asked the Lord to be with the President and with Congress; asked Him to give them wisdom to do by this country whatever was right.

*Cross-examined.* The addresses and prayers were in German. Speak that language in my home, mostly; that is to say, oftener than English. The people attending the church were telephoned to out around in the country to come to Mr. Fontana's home. I met quite a number of other people there who have been witnesses here on the stand. Mr. Knauf was there.

There was an interpreter there to translate it into German as to such people as did not readily understand the English language. We were asked if we had ever heard anything disloyal in the sermons.

*William Wriebke.* Live in New Salem. Am a retired farmer. Belong to Fontana's church. He prayed that we were all American citizens, and we should hold to this country and should do our duty, and prayed for the Red Cross and Liberty Bonds, as much as I can remember. He prayed for our Government, for the President, Congress, so the war would be ended.

*Paul Hohers.* Live in New

**Salem.** Am a farmer. Attended the church of Rev. Fontana right after the United States went to war with Germany. He prayed for our President, for the Governor, for the Congress, for our superiors, and for the navy and army, and that we may have peace between the old Fatherland and the new Fatherland; and he prayed for that we should have rain, sufficient rain that we would get good crops, and the people would have sufficient to eat.

**Henry Albright.** Am a member of Mr. Fontana's church. After the war was declared between the United States and Germany he prayed for the United States, for the President, officers and Congress and the army and navy. When our soldiers began going over, he prayed for the boys.

**Cross-examined.** He prayed for peace, but I never heard him pray that this war between Germany and the United States or between the Allies and Germany should cease. Never heard him pray at any time that God should bless Belgium.

**Walter Lehfeldt.** Live in New Salem. Belong to the church up there of Mr. Fontana. Was there Easter Sunday. He prayed, "God bless our President, Congress and also bless our community. The early part of August, 1917, he said "Germany has a weapon that enabled her to hold off her enemies until now. But God gave us Christians a weapon which is stronger than that, and that weapon is prayer.

**Mr. Hildreth.** What weapon do you think he referred to when he said Germany had a weapon

to hold off its enemies? I don't know. Do you think he meant the machines that fly up in the air?

**Mr. Knauf.** Objected to.

The COURT. The objection is overruled. You may answer.

**Mr. Hildreth.** Won't you answer again whether you thought he referred to a machine in the air or under the waves? I don't know. Do you mean to tell these twelve men that you have no idea what he meant? Yes, sir.

**Fred Tellmann.** Am a member of Fontana's church; heard him pray, "Give the President and Congress wisdom," and for an early peace.

**Cross-examined.** Some days ago was called in by telephone to Mr. Fontana's residence; found a number of other people there, who have been on the stand here as witnesses. Mr. Knauf was there; there was some talk about prayers there that evening; we talked about some of the sermons that Mr. Fontana had preached after war broke out between the United States and Germany.

**John Tellmann.** Am a member of the church of Mr. Fontana. Heard him say that God may bless our President, and the Congress that they may do what is right.

**Cross-examined.** There is a German paper that comes to New Salem; I take it and read it.

**Carl Westmeier.** Attend the church of Rev. Fontana; in his prayers he said, "God bless our President, our army, and our navy, and Congress and our

country." Did not say anything about joining the army or navy.

*Herman Westheimer.* Have a dairy and general farm; belong to the church of the defendant. He prayed, May God bless our country, our country's President, Congress, army, navy and stop the bloodshed all over the world.

*Cross-examined.* Never heard Rev. Fontana ask the choir to sing "My country, tis of thee, sweet land of liberty." Never heard the choir or Mr. Fontana sing any songs about the flag.

*Gustav Ietrick.* Am a member of Mr. Fontana's church. He asked God to bless our President, congress and all officers,

*Mr. Hildreth.* People come down, and have been coming down there to your place since war was declared, and sit and visit and talk over about the war.

*Mr. Knauf.* Objected to.

The COURT. It is competent as going to the question of the interest of the witness.

*Engelter.* Why, people did come down to the store and congregate, but it wasn't exactly—I couldn't say it was war topics. He stated after his sermon one time, that—"We are now in war with the old Fatherland; you have taken your oaths and have sworn to be loyal to your new Fatherland, and I hope you will now show your loyalty to your new adopted country." In his prayers he would ask God to bless our President, our Congress, that they may judge correctly; bless our army and navy, and all our officials.

*Mrs. J. Fontana.* Am the wife of defendant. Was born in Norwich, Minnesota; am organist at the church. Between the 6th day of April, 1917, and

the army and navy, and the whole United States. He never said anything about joining the army or navy of the United States.

*O. Ietrick.* Am a member of Mr. Fontana's church. Attend church there about every other Sunday. Am a brother to the man who was just on the stand. Have a brother in the army. He (Fontana) prayed that God may bless our President, our government, make peace all over the world, and stop shedding this blood.

*Henry Engelter.* Am a member of the church of Mr. Fontana. I sing in the choir.

the 1st day of January, 1918, my husband prayed, "God bless our country, our people, our President and Congress, our government, and help our army and navy, and help that they may serve to promote the sanctification of Thy name, and the welfare of Thy people. Almighty God, we pray Thee that Thou wilt stop this present war through Thy mercy, and give grace that everybody may be converted to Thee. Prevent bloodshed, remove the offenses, prevent devastation, and give peace all over, through Jesus Christ, our Prince of Peace. Prevent bloodshed between our country and our old Fatherland, and give us an honorable peace."

He never used the prayer, "I pray for our old Fatherland that you will give him victory over his foes and destroy and shatter all who wants his evil." The next Sunday after Easter he said, "We are now at war with the old Fatherland. This is our country. We adopted this country when we became citizens of the United States, and we promised and swore to the Constitution that we would stand by this country. Now is the time to prove and show it that we are willing to do our duty, and I ask you to do your duty as a citizen of the United States, and to give up everything, if it has to be, to the last man." In the first part of August or latter part of July, 1917, his topic was "Temptation," and how we can resist temptation. At the end of his sermon he gave an illustration, and said, "Germany in her fight against a great number of enemies has a weapon which enabled her to hold out until now; but God has given every Christian a weapon with which he can defeat all temptation at all times, namely, prayer. The Lord says, 'Watch and pray that ye enter not into temptation. The spirit indeed is willing but the flesh is weak.'"

During his sermon on temptation he did not say that God was with his people, the children of Israel, and helped them to overcome their enemies, and so he gave the German people ways and means to stand off their enemies of the world, or that God specially blessed the German people because they had these submarines as a means of war-

fare. Last October at our house heard some talk between Mr. Kling and defendant in relation to the purchase of Liberty Bonds. Mr. Kling says, "Well, Mr. Fontana, could I have some of your time?" My husband says, "I am very busy." Mr. Kling said, "Well, it will take but a few minutes." My husband asked him to sit down. "Well," he says, "Mr. Fontana, we would like to have you subscribe for Liberty Bonds." My husband says, "I can't." He says, "Why not?" My husband says, "I am not able to." "Oh," he says, "if everybody would say that we wouldn't sell any Liberty Bonds." "Well," my husband says, "everybody doesn't have to say so because others have more money than I have;" and Mr. Kling says, "Why, you have lots of money. You have a rich congregation." My husband says, "The congregation's money isn't my money." "Well, I know," Mr. Kling says, "but we will make it easy for you. We will lend you the money." "Well," my husband says, "how would the difference be in interest?" He says, "Well, of course, you would have to pay 6 per cent." My husband says, "I have a family to support. I cannot subscribe for Liberty Bonds at the present time; and besides I have debts." Well, Mr. Kling insisted on having him buy Liberty Bonds. So my husband says, "Besides, I wouldn't buy Liberty Bonds from you anyhow, even if I had the money." So Mr. Kling got real sore about it, and he said, "Don't you think it is a good investment?" And my husband says,

"I think it is a very good investment. If I had a million dollars I would buy nothing but Liberty Bonds. I think the United States government is the best security there is." So I walked out in the kitchen to look after my dinner, and when I came back they were talking about the draft law, and Mr. Kling asked my husband what he thought about the draft law. My husband said he thought it was a very good law, and it was wrong that we did not have this law before. He thought we should have had this law long before, when the European countries went to war, then we would be prepared at the present time. Then they talked about the shipbuilding bill, and my husband said he thought it was a very good thing. And finally they drifted over—Mr. Kling stated that Professor Koenig would speak the following Saturday at the Auditorium, and they would like to see my husband there, to hear him; and my husband says, "I am very sorry, but I have school on that day." Mr. Kling says maybe he can let out sooner, and my husband says, "I will try to." Mr. Kling talked a while. He said he thought it was a very good thing to hear Mr. Koenig. Mr. Koenig was a very good talker, and my husband said he would see. So Mr. Kling left and he said, "You will be sorry if you don't."

*Cross-examined.* The Stars and Stripes were put up in my husband's church sometime in June, 1918, at the same time as the service flag. Since the war was declared I played the pa-

triotic songs in church, "My Country, 'Tis of Thee," and "Star Spangled Banner." I see the German papers at home; don't read them; my husband reads them; he never has read the German news to me. During these years, and since the 6th day of April, 1917, we never talked about the submarine or about the bombs that were thrown from the German airships on to London and other cities. Didn't discuss about soldiers being sick with disease and had to be taken care of by nurses or about sending women over there to help the sick and wounded in the hospitals. I telephoned out in the country for them to come to my house that evening and see Mr. Knauf; those people that have been witnesses here. Mr. Knauf asked certain questions.

*Mr. Hildreth.* Did your husband at any time mention in any of his sermons that Germany had a weapon? He said that Germany in her fight against a great number of enemies, has a weapon which enabled her to hold out until now. But God has given every Christian a weapon with which he can defeat all temptations at all times, namely, the prayer. "The Lord says, 'Watch and pray that ye enter not into temptation. The spirit indeed is willing but the flesh is weak.'"

What weapon did you think your husband had reference to? I haven't any idea, not the slightest.

Didn't you get any impression at all from the language that was used whether he meant one of these things up in the

air, or one of these things under the tumultuous waves, or whether he meant great volumes of gas that roll over, and over, and over, until they stifle the soldiers of the Allies? No, sir.

*Fred Kroeger.* Am a member

of the church of Mr. Fontana. I have gone to church, but I never heard him say anything about the war. I remember him saying—praying for peace between the United States and Germany.

### THE PRISONER'S STATEMENT.

*Rev. J. Fontana.* Am 46 years old, and am a minister of the Gospel in the German Evangelical Church; was born in Germany; my father was Italian, mother was German; came to the United States at sixteen and a half; heard the testimony of Mr. Kling; remember of his coming to my house during the Liberty Loan Drive. He came to the door, and asked me if I had some time. I said I was just busy. "Well," he says, it will take only a few minutes." Well, I says he should come in, and he said he was there to get me on the list as Liberty Bond subscriber. I told him that I could not buy any Liberty Bonds. He says, "Why not?" I said, "Because I haven't got the money." "Oh," he says, "you got all kinds of money." I says, "I have not; I am in debt." He says, "Well, you got a rich congregation." I said, "The congregation's money isn't my money." He says, "We will make it easy for you. We will loan you the money." Well, I asked him if he would loan it at the same rate of interest as the Liberty Bond was. He said, no, but they would make a very low rate of interest; would only charge 6 per cent until after New Years, and after that 10 per cent. "Well," I says, "I have a family; I can't afford to do that, and pay that high rate of interest, and buy Liberty Bonds. I cannot see my way through; I don't know how to pay it afterwards." "Well," he says, "but you ought to buy a Liberty Bond. If everybody would say that he could not afford to buy, we would not sell any." I says, "Other people have more money than I." Then he says, "Why don't you want to buy any Liberty Bonds? Don't you think it is a good investment?" I says, "I do. I wish I had a lot of money; I would invest it in Liberty Bonds. The United States is the best security there is in the world at the present time; and besides, if I had the money, I would not buy any Liberty Bonds from you." "Why not," he says; "Well," I said, "because I would buy the bonds where I do business, the bank I do business with." Then he inquired about the draft law, what I thought of the draft law. I said, "I think it is a very good law, and we ought to have had that law a couple of years before we entered the war. The people would be prepared then." I says, "There may be considerable criticism of that law, and maybe there is some shortcoming in executing the law at the present time because it is something new; we are not used to it; we have to get used to those things, and find out what is the best way for our conditions in this country." And then he spoke

about the ship building, and I says, "That is something very good. The American nation ought to have the largest merchant navy in the world." And then he said I should come over Saturday and hear Professor Koenig; he would make a speech in German. "Well," I said, "I will try to come over, though I would like to hear a man speak who speaks in English. I know about what the Germans have to say, being born in the old country myself." "Well," he says, "you should come," and he asked if I promised that. "Well," I says, "I cannot promise it because I have to keep school, but I will try my very best to be there." And he says, "Will you promise that?" I says, "I do." He says, "You will be sorry if you miss that." Well, I says, if he doesn't start too early I will try to let the children out a little earlier; and so I did, but when I came home somebody was there and wanted to see me, and took up a few minutes, and then the speech of Professor Koenig was over.

My salary is \$1000 a year; had some debts outstanding at that time, something over \$2000. I did not say to him or at any time since we were in the war that I was proud of the noble fight the Germans were making. I never talked to him about the Lusitania. Did not tell him that there was no reason whatever for the United States taking up arms against Germany, nor that I would not subscribe for Liberty Bonds because it would tend to encourage the administration or the national government, or that the President was using the same methods to force the banks within the United States to subscribe for Liberty Loan Bonds, or that the purchase of Liberty Bonds would give the country more money with which to fight Germany, and thus prolong the war, or words to that effect. Did not state to him that I desired to see the success of the enemies of the United States, or that Mr. Wilson had secured his election upon the slogan, "He kept us out of war," and then turned squarely around and used his high office to whip members of Congress into line by threats of exposure, or otherwise, or words to that effect. I said it seemed to me that President Wilson was in favor of the war after he was elected; that the country was ready for peace, because I believed that President Wilson was elected on account of the slogan, "He kept us out of war." Was present in court while Schadel testified. In none of my prayers from April 6, 1917, down to June 1st, 1917, did I make the prayer: "I pray for our old Fatherland that you will give him victory over his foes, and destroy and shatter all who wants his evil." Preached a sermon along the first of August, 1917, upon the topic of "Temptations." Did not say, "God specially blessed the German people because they had the submarine as a means of warfare," or words to that effect, or that "As the Lord was with his people, the children of Israel, and helped them to overcome their enemies, so he gave to the German people ways and means to stand off their enemies of the world," or words to that effect. The sermon was in German.

**Mr. Knauf.** Can you deliver it to the jury here in German as you

delivered it there that day? I think so. Do so, and deliver it slowly, and the interpreter will interpret it in English.

The COURT. I do not think it would be proper to take the time of the court to hear an entire sermon preached here, because there would be many things in it that would be wholly not germane to the matter that we are here investigating. He may state fully anything that was said in regard to any subjects that are under investigation here, Mr. Knauf, and anything that was said in the sermon which in your and his judgment qualified anything that he did say to which attention has been drawn by former witnesses in the case. But I am not going to take the time to have a sermon preached here.

Mr. Knauf. Now, if the Court please, as I have studied the case, I do not believe that the sermon was an extra long sermon. The sermon, as I take it, and as I have studied the case, was delivered upon the topic of Temptations to Sin, and that this man had preached the sermon about sin, drawing some illustrations through his sermon, some of them quite apt to the subject; and I think the entire sermon goes to explain the intent, and the spirit which actuated the man upon that occasion of delivering that sermon; and I believe that under the rules of evidence as laid down not only in the Clark case, but generally by this Federal Court, that the whole sermon should be heard.

The COURT. There has been no charge here that that sermon was seditious as a sermon, so far as I know, by any evidence that is produced here on the part of the government; and there has been nothing in it except a very brief passage to which any reference has been made. Now, I have stated to you the limits which I think will be proper to go into; and his general sermon on the subject of temptation to sin, while it might be interesting on some occasions, will not be helpful to us in the decision of the case that we are now engaged in. I am not inclined to permit the witness to preach the whole sermon here to this jury. I will allow you the widest possible latitude in stating any part of the sermon that is germane to the inquiry that we now have under investigation.

Mr. Knauf. Can you tell the jury in German better than you can in English what you said regarding Germany; and that part of your sermon? Yes, sir. You may state to the jury slowly so that the interpreter may translate what you stated in that regard.

Mr. Hildreth. This is an improper way to examine this witness. The proper method is to put questions to him in the English, and then have the interpreter translate them into German, and let him answer in German. It does not give me any opportunity to object.

The COURT. Mr. Fontana has shown upon his examination that he is capable of speaking the English language with reasonable fluency, and he should testify in the English language.

Mr. Knauf. He can do that, Your Honor, I think very nicely, but there are some words that he is unable to literally translate



from the German to the English. In my talking to him I have found that out.

The COURT. He may refer to the German word that he uses and give the best English corresponding word that he can, either the word or the phrase, so as to convey the thought he had. He may call attention to the German word, that he used, if he wishes to.

Mr. Knauf. And if he is unable to translate those German words, is he permitted to ask the help of the interpreter?

The JUDGE. Well, I do not apprehend myself that it is necessary to have the help of the interpreter.

Mr. Knauf. Now, Mr. Fontana, are you able to state practically in English what you said with reference to Germany, and that portion of your sermon? I think I can state the sum and substance of what I said in German. And state it in English. You may do so. If there are any words that you come to that you cannot think of in English, you have a right to speak them in German. I take it that is the Court's ruling?

The COURT. Certainly, and then give us the best translation he can.

Mr. Fontana. After saying in my sermon that we should not depend upon our own strength and virtue in our fight against temptations, but on the help of God and His Mercy, I went on and said: "He stands with us even in temptation, the dear and faithful God, and helps us and fights for us; but we must also fight, and He Himself gives us the weapon, furnishes us the weapon with which to fight daily temptations." And then I referred, as an illustration, to Germany, saying, Germany has a weapon with which she held out against her numerous and powerful enemies till now; but God has given the Christian a weapon with which he can resist and overcome temptation at all times—the prayer. "Watch ye and pray that ye do not"—I cannot repeat that in English Bible language—watch that you do not fall into temptation, for the spirit is willing but the flesh is weak. And then I went on and said, "This is the weapon God gave us, and we should daily practice this weapon so that we may be skilled in the use of that weapon against the daily temptations, and overcome our temptations, for he who believeth and overcomes temptations will be saved;" and concluded: "The Lord grant us all that we may be skilled in the use of that weapon and overcome temptation, and finally grant us eternal salvation."

After the sermon I turned to the congregation and said: "Our country is at war with Germany now, and we have to stand by this country. We have sworn to that when we became citizens, and we have to stand by this country under all circumstances because this is now our Fatherland. We have no rights and no duties over there any more, and we have to stand by our country with all what we are and what we have to the last man if necessary."

Mr. Knauf. Can you turn to the book of prayers and state to the jury the language in which you prayed in regard to the United States government? Yes.

**Mr. Knauf.** Can you translate to the jury, or translate into English, the portions from which you prayed regarding the United States? Yes. "Bless in particular our own country and our people, with its government, and help that this government at all places may serve to the sanctification of Thy name, and to the welfare of the people; give riches and peace; protect and increase liberty and justice, and turn away graciously all calamities, sicknesses and pestilence."

**Mr. Knauf.** Have you another prayer that you used on Sundays too? Yes. "Let Thy grace in particular be great over our country and all those that are appointed to seek and promote the welfare of the country; teach them to remember their oath, and make them a blessing for the people; give them a wise heart, wholesome thoughts, and just works, that we may lead under their administration a quiet and peaceful life in all holiness and honesty."

Mr. Podoll called me on the telephone. He said he was positive it was the devil that enabled the Germans to devise all these instruments of torture. I laughed and said, "Maybe he did, for all I know." He asked me if I thought or believed that the German people were the chosen people. I answered, "I didn't say so." "Well," he says, "I know, but do you believe that?" I says, "I usually say what I believe." I never at any time had any intention or desire to interfere with the operation or success of the military or naval forces of the United States, or to promote the success of the enemies of the United States or wish to cause, or attempt to cause insubordination, or disloyalty, or mutiny, or refusal of duty in the military or naval forces of the United States, or to in any manner obstruct the recruiting or enlistment service of the United States. I am a full citizen of the United States. The congregation I have to preach for consists of people who originate from Germany—all of the old folks. The young folks, practically all of them, were born in this country. According to the statutes of the church as a rule the German language has to be used in the services and religious instruction. About ninety per cent of the folks who live in New Salem and that vicinity are Germans or descendants of Germans. There is an American Protestant church at New Salem—Presbyterian. There is a Catholic church there.

I was requested several times, and had been before that time, from time to time, by the elders, to see to it that our Sunday school is not drifting altogether into English. Some people complained about that that the teachers used the English language altogether in the Sunday school, and they desired to have their children learn some German in the Sunday school, too, that the church would not turn so quick into an English church before the old folks die out. I told the teachers that they should try to use the German as much as possible, and I told them I know it is very hard to explain the German, and they have to use the English sometimes with the children to explain the German expressions, and they should do so, but they should try to carry on the instructions in German as much as

possible, because I had some complaints, and the statutes of the church orders us to do so. It is simply the Evangelical Church Synod. Our church has as its foundation the teachings of Martin Luther. It gets its discipline and instructions from the head of our Synod in the United States—something like the organization of the Methodist Church.

About thirty-five of the young men between the ages of eighteen and forty-five have gone from our church into the United States army or navy, or the government service.

*Mr. Knauf.* Did you have any talk with some of the boys who volunteered from your church directly after the United States declared the existence of a state of war with Germany. Yes, sir, with William Geisler, who volunteered.

*Mr. Knauf.* And what did you state to him when he was about to leave?

*Mr. Hildreth.* Objected to.

The COURT. Was the conversation in the presence of anybody except yourself and the boy? I do not know if anybody was present. It was on the sidewalk that I talked to him.

The COURT. I think the objection should be sustained.

*Mr. Fontana.* I talked with Mrs. Nellie Dietz, who was on the stand. She asked me if I had been over to the meeting when the Red Cross was organized. I said I was sorry I could not be there. I had to go to Judson to a mission-fest and preach there in the afternoon; and she asked me—I asked her if she had been there? She said, no, she had not been there either, but she joined the Red Cross. She asked what I thought of the Red Cross. "Well," I said, "it is all right;" but she asked me if I had joined. I said, "Not at the present time." I said before I joined the Red Cross I would like to have some more light about the statement Mr. Davidson made regarding the purpose of the Red Cross; and I said that it was reported to me that Mr. Stutzman, in that meeting in New Salem, had made some statements to the same effect, and he had not spoken very nice about German-Americans—Americans of German descent. I said if I had been there I would have got up and inquired about that, and asked questions. If Mr. Stutzman really means that the American Red Cross would not help German or Austrian soldiers that fell within the lines of the Americans.

*Mr. Hildreth.* In your sermon you spoke of a weapon Germany had. What did you refer to?

*Mr. Fontana.* That is immaterial.

*Mr. Hildreth.* I think it is a very important question. He stated he preached a sermon on sin and temptation. There is evidence in this record from the government's witnesses that he spoke of the submarine as an instrumentality by which Germany had been able to arm herself.

The COURT. I think I can straighten the matter out very easily. It is not for you, Mr. Witness, to judge whether it is material or

immaterial. That is for the decision of the court, and it is for you to answer the question that was asked you some time ago.

*Mr. Fontana.* I had in mind more than one weapon. I meant all those devices that made Germany, that enabled Germany to resist their numerous powerful enemies. They are the Zeppelins, the submarines, and that 42-centimeter, and—I think that is about all I know of, when I preached that sermon, the fifth of August. There were present, maybe, between sixty, seventy, to a hundred young men of draft age, undoubtedly. I told Mr. Kling that President Wilson was elected because he kept us out of the war, and that is what I think he was elected on. I said that I did not think that the people of the United States, as a whole, is very much in favor of war. I have never been in favor of war. I am a man of peace.

*Mr. Hildreth.* How does it happen that you didn't get a flag up until June, 1918? Because nobody put one up. Was there anything to hinder you from putting one up? It is not my duty to put one up. Do you know a man name Max Thies who runs a meat market in New Salem? Isn't it a fact you went into his butcher-shop shortly after the Italian drive, and said you wanted some Italian sausage, that they would be cheap now? No, sir. Didn't it come out in your examination, and wasn't it stated in your presence before the United States Commissioner, Mr. Carmody, conducting the examination, my associate here, and wasn't it stated in your presence that you went into the butcher shop shortly after this Italian drive, and said you wanted some Italian sausage because it must be cheap now? No, sir.

The COURT. Just a moment. If they were statements that were made by the witnesses in the course of the examination, the fact that the statements were made in his presence would not amount to an admission on his part that they were true, and a fair inference from your examination is that they were made in the course of judicial proceedings. If the statement did occur in the course of a judicial proceeding, then the examination was highly improper to inquire about, because if it was made by somebody else, in his presence, it would not be fair to say that simply by being present where he was required to be present by law, that he approved of statements made under such circumstances.

*Mr. Hildreth.* I think he has already denied it.

The COURT. But the question would be improper to ask in regard to such a matter. (To the Jury): If in a private conversation, gentlemen, a statement is made in the presence of a party which it would be his duty under ordinary promptings of human life to deny, and he simply stands by and hears it, that would be a proper fact to show as to whether he did or did not admit it. But no such rule as that is applicable to statements that are made in a judicial proceeding, especially where the man is compelled to be present, and is under arrest, and where he has no right to interfere with the proceeding, or make any answer to it.

*Mr. Hildreth.* Did you not tell Mr. Kling you "would not take one

if you had the money"? I told him I would not take one from him if I had the money. Did you also say you would not take a Liberty Bond because it would be fighting the war? I hardly think I did. Did you ever state you did not feel like joining the Red Cross because a young lady was refused admission on account of her German birth? I made such a statement. Did you also state, "The war between the United States and Germany is something terrible, yet God permits it to go on; I have been taking the Advocate, which is the official publication of the Society of Peace?" I don't remember that I made a statement as to the war being terrible, but God lets it go on. I may have said that; and on being questioned, answered, I was reading and I got the Advocate of Peace right along. I told Mr. Podoll that the Prussian State Church was a union between the reformed and the Lutheran churches, because most of the Prussian people were Lutherans, while the royal house was Reformed, Calvinistic; and I stated that our church is a union, too, between the Reformed Church and the Lutheran here in this country, that is, of the people; but that there was a difference between the Prussian Church and our church in that the Prussian Church left the different communities as they were. If they were Lutherans they were Lutherans; if they were Calvinists they were Calvinists, under the same church rule, government; while we have a Catechism all the same for our church members no matter where they came from, from the Lutheran or from the Calvinistic Church. The charge as to the Red Cross was a quotation from the New York American of June 10, 1917. I read it some time later in "Issues and Events."

The COURT. Instead of accepting a statement that purported to come from Mr. Hearst's American in regard to the great charity of the Red Cross, and reflecting upon its activities, why did you not go to the trouble of sending a letter that would cost you just three cents to somebody in authority in the Red Cross, and find out whether Mr. Davidson had ever made any such statements, or whether that was true in regard to the Red Cross? I did read later on a retraction of what he had stated; besides an official of the Red Cross Chapter in New Salem told me that Mr. Stutsman had made remarks to the same effect when he was up in New Salem to organize the Red Cross Chapter.

The COURT. You should not accept the random statements of people in regard to such an important matter. The Red Cross is the largest private human charity that this world has ever seen. The fact is, as I happen to know from my own acquaintance with regard to the Red Cross, that the information that you trusted was not trustworthy. The Red Cross makes no discrimination as to its charity between people who belong to the so-called Allies, the English, the French, the Italians and Americans, and the Germans and Austrians. If, in the changing tide of war, it happens that wounded Austrians or Germans are left within the reach of the American Red Cross, they receive from its nurses and its officials

precisely the same care which Americans, or Englishmen, or Frenchmen receive, and you could have learned that fact with very little trouble. Inasmuch as I brought out the statement myself, I think that is due to clear it up. A letter to Mr. Davidson personally would have brought an answer that he had never made any statement that the Red Cross refused to care for wounded Germans or Austrians who are found on our side of the line of battle by the shifting course of that line as the battle is carried on. The only thing the Red Cross looks to is, is it a human being that needs nursing and care. That is the quality of the Red Cross service.

*Mr. Knauf.* Later did you find out that the article that you had read was untrue, and then joined the Red Cross? I found out that Mr. Davidson made a statement that it was not his meaning in his statement that the American Red Cross would not care for enemies that fell within the American lines, and that they would get the same care as our own soldiers, and then I joined the Red Cross.

*Mr. Hildreth.* When did you join the Red Cross, Mr. Fontana? December, 1917. That was after you had been arrested by the officials of the government, wasn't it? Yes, sir. You testified that you told Mr. Kling that the reason why you could not buy Liberty Bonds was because you were heavily in debt. Isn't it a fact that you bought an automobile in 1917? Yes, sir. And used it during the year 1917, and have got it now? I bought it in 1917, and I used it all the time.

*Mr. Knauf.* What kind of a machine did you get? A Ford. And for what purpose did you use it? To drive out to Blue Grass, where those six families live, and besides do my pastoral work in the congregation.

#### IN REBUTTAL.

*Mrs. Wainwright* (recalled). Have been a regular attendant of the church since the war until two months ago, almost every Sunday; was in the choir.

*Mr. Hildreth.* Did Mr. or Mrs. Fontana ever play "Our Country 'Tis of Thee," or the "Star Spangled Banner," or any of those patriotic airs, as a prelude to any religious service, since the 6th day of April, 1917, down to the time that you speak of attending the church? No, sir.

*Everett R. Lanterman.* I am United States Commissioner at Mandan, before whom defendant had a preliminary hearing about the 27th of November, 1917; he

was sworn and testified as a witness in his own behalf. I took down some notes at that time. Can't remember the exact words that he said in every particular, but there are some outstanding facts which stand out in my memory. I distinctly remember Fontana said that he would not buy Liberty Bonds for the reason that it would be feeding the war. He went on to describe, as he has done here, about reading that article, and then, as I remember it, he made some statement about some German girl, I believed he expressed it, who had been refused admission to the Red Cross because she was

German. I remember that he made the statement that he had prayed for the success of Germany before the war, but as to any prayers since the war, any remarks he made were unintentional. I recall his making a statement on that occasion that he was proud of the success of the German armies and the good fight they were making, or putting up.

*Cross-examined.* I do not pretend to repeat his exact language except that one exception there that he made the exact statement that he would not buy Liberty Bonds because it would be feeding the war. Those are his exact words. Don't remember whether he stated he was too much in debt to buy Liberty Bonds.

The Court. Gentlemen, I think I ought to call your attention to the distinction which you must carefully keep in mind throughout the trial of the case. The defendant is upon trial here for the use of language set forth in the indictment, and for that alone. That is all he is responsible for at this bar at this time. The court has been and is receiving a large amount of evidence as to other acts, omissions, and statements of the defendant. Those other acts, omissions and statements, are received solely for the purpose of indicating the intent which actuated the defendant in the use of the language charged in the indictment. He is not upon trial for anything that he omitted to do, or anything that he said or did, except what is charged in the indictment. All these other things lying outside of the language that is the basis of this indictment are received for the purpose of showing the intent with which the defendant used that language, and for no other purpose, and you must not use it for any other purpose than as going to the intent with which the defendant used this language. It is so easy when a trial takes the broad scope that this does, for the jury to fail to remember that the defendant is upon trial solely with respect to what is charged in the indictment. That is all he is upon trial for and the only reason which leads the court to admit these other statements and acts, and omissions of the defendant, is to aid the jury in determining whether he used the language set forth in the indictment with the purpose of causing mutiny, [insubordination] and refusal of duty in the military and naval forces, or with the intent to obstruct the recruiting and enlistment service of the United States. The jury must carry that line of dictinction in mind all the time in order to fairly try the case.

D. A. Podoll (recalled). I heard Mr. Fontana make the statement in regard to my conversation with him as to the character of the church at New Salem, and as to its relations to the church of Germany,

or Prussia. I talked to him about the Evangelical Church and the Prussian State Church several times. The last time was about the first part of February, 1918, at our Endeavor meeting, when the topic was up for discuss-

sion, "What My Church Stands for, and What It Is Doing."

During the discussion I asked him—

*Mr. Knauf.* Objected to. No grounds for this testimony have been laid in that defendant's objection was not called to the time or place mentioned at this time by the witness.

The COURT. I am not sure but that there is some merit in that statement as to whether the defendant's attention was called to the particular occasion.

*Mr. Hildreth.* If there is any question about it at all I can call Mr. Fontana back, and let this witness step aside a moment. I will do that if there is any doubt in the Court's mind. You may step aside.

*Rev. John Fontana* (recalled).

*Mr. Hildreth.* Did you ever, at any time, in the year 1917, and in February, 1918, in the church, or about the church, have a conversation with Mr. Podoll with reference to the character and relation of your church with the Prussian Church, or, as it is commonly known, the Evangelical Church? I don't remember. I may have said that the standing of the Evangelical Church of this country is similar in this that it is a union between the Reformed and Lutheran Church, the same as the Prussian State Church. But there is a difference in the manner of union between the Prussian and this church. Did you ever state to him in form and in substance that the church at New Salem that you preached in and presided over, was in fact practically the same as the Prussian Church, or words in substance to that effect, at any time in February, 1918, there in New Salem? I don't remember. I might have said this regarding our creed.

*D. A. Podoll.* In the course of the discussion I asked about the Prussian State Church, and he explained that it was a union

between the old Lutheran and the Reformed. And then I asked whether it was not the same then as the Evangelical Church of this country, and he said, "Yes, it is."

*Mrs. Fred Diets.* Had a conversation with defendant with reference to joining the Red Cross some time in 1917—the end of July or August. He said—he did not say he would not join the Red Cross. He only said that he would not join the Red Cross at that time as long as the sayings—something about Mr. Davidson—be not changed. It was at a meeting of the Ladies' Aid, and there were some eighteen present.

*D. A. Podoll* (recalled).

*Mr. Hildreth.* Were you, after war was declared, over to Fontana's house frequently or otherwise? I was there several times. What have you to say as to whether there was in his house, on the public walls of his house, pictures of the kaiser or not?

*Mr. Knauf.* We object.

The COURT. My own judgment is that the evidence itself is of questionable character. The objection is sustained.

*Mr. Knauf.* The Government and the defendant having rested,



we move the Court to direct a      The Court. The motion is  
verdict on behalf of the defend-      denied.  
ant.

## § THE SPEECHES TO THE JURY.

*Mr. Shaw.* Gentlemen of the jury, the District Attorney tells you that my client is a German minister and preached at New Salem, Morton County, North Dakota, to a German congregation of from fifty to 200 people; that ninety per cent of the people of that community were Germans; that the German language was used in the church and that his general attitude was that of a pro-German.

Why make that as a statement of fact to the exclusion of all other facts? Is it a crime to be a German minister? Is he responsible for the accident of his birth? Is he responsible because ninety per cent of the people in his community were Germans, or that the German language is used in the church? The Government of the United States has from its inception invited the people of foreign lands to this country. It has been our proud boast that we were the asylum for the down-trodden and oppressed of all lands; that we were the melting pot of the world. But, unfortunately, the Government has let the pot boil as it would. Like sees like; so, too, people of foreign lands arriving in this country have sought to settle in communities where their compatriots were. This was natural and to be expected. But what have we, the people or Government of these United States, done to remedy the situation? Is the preacher responsible for this condition? And yet counsel for the Government which has permitted this condition to arise sets it forth as if it were a crime and that the minister is responsible for it.

Rev. Mr. Fontana was allowed to come to this country, settle among the people of his own nationality and follow their customs and ways without any effort on the part of the Government or us, the people of these United States, to show him better ways, and yet, because he preached in German and prayed in German, this is argued to you as evidence of the crime charged, because, forsooth, he expressed some things

during the war that are not strictly patriotic or truly American. But how can you gather from what he said that he wilfully made or conveyed false reports or false statements with intent to interfere with the operation or success of the military or naval forces of these United States or to promote the success of its enemies; or wilfully cause or attempt to cause insubordination, disloyalty, mutiny or refusal of duty in the military or naval forces of the United States or wilfully obstruct the recruiting or enlistment service of the United States? I admit that before we entered the war with Germany he prayed for the success of the Germans. Undoubtedly such a course of action was offensive to the great majority of the people of the United States, but as between Germany and France and England and the other allied nations of Europe, why should he not side with his native land? Would not a person of Norwegian, French, Russian or Danish nativity have done likewise? If any of you settled in Germany and became a naturalized citizen of Germany and had the news brought to your community that there was war between America and England, or France, or Russia, where would your sympathies be? Would you not pray that American arms would be victorious?

After we entered the war with Germany the evidence shows by the great weight of the testimony that defendant was doing his best to reconstruct himself as a loyal American citizen. And this effort in itself showed a clear intention not to do the things charged in the indictment and denounced by the law. The proof that Mr. Fontana made strong effort to adjust himself to the fact that we were at war with Germany and lay aside his German sympathies is found in the testimony of Herman Kroeger, that old soldier of the War of the Rebellion, the testimony of John Christianson and the testimony of Fred Lenhart. That testimony shows clearly that the minister had ceased to pray for the success of Germany. What he said or did or where his sympathies were before this country was at war with Germany cannot be considered as a crime in violation of the statute. Nor is it material to any of the

issues in this case. It is a matter of common knowledge that many Americans of long-time lineage were sympathetic with Germany at the beginning of the great war, but when this country got into war with Germany they immediately fell into line as good citizens. So, too, did many Germans, and I believe that Mr. Fontana was one of them. The three witnesses I have just referred to and who were in faithful attendance upon the services of the church to which defendant ministered, say that he did not, after we entered into war with Germany, pray for the success of Germany.

The District Attorney brings the charges on the sermon preached by the minister some time in July or August, 1917. This was a sermon on temptation. The Court would not permit us to give the whole sermon in evidence, but restricted him to the illustration which is in substance as follows:

"Germany has a weapon with which she has held out her numerous and powerful enemies till now; but God had given to the Christian a weapon with which he can resist and overcome temptation at all times—the prayer."

That was the only objectionable statement of the whole sermon, if that can be said to be objectionable. What more forcible illustration could have been used to bring home to the German mind the thought that the God-given weapon, prayer, would give the Christian a power to resist and overcome temptation to sin? Furthermore, the illustration was not a false statement of fact and could not have interfered with the Government in its army and naval operations. The whole wor'd knew that up to that time Germany had had the power to defeat her enemies. That knowledge was but the spur to greater effort on the part of the entente and brought this country into the war to save the world for democracy. If we had been allowed to put the entire sermon in evidence for you to consider instead of a small part of it, and that part the only portion that could have prejudiced the minister in the minds of the jury, then I could have argued to you the intent and purpose of the sermon and shown by its every part that there was no intention to obstruct and inter-

fare with the army and naval operations of the Government; in fact, it had nothing to do with the doings of the Government and that the thought of the preacher was concerned with the spiritual condition of his flock and not an attempt on his part to throw himself in the way of the oncoming governmental Juggernaut. But the sermon is not before you, and its contents and the intent with which it was delivered cannot be presented to you. It must be conceded that this sermon played a large part in bringing about this prosecution.

The indictment alleges that defendant said "President Wilson was a man who, after securing his election on the slogan 'He kept us out of war,' turns squarely around and by use of his high office of President whipped the Members of Congress into line by threats of exposure of this one and that one, and in this way secured the authority to enter into war with Germany; that he felt proud of the noble fight the Germans were making in the war; that the sinking of the Lusitania was justified; and that there was no reason whatever for the United States taking up arms against Germany." The only person to whom he made these statements, as shown by the evidence, was the witness Kling, at the home of the minister in the hearing and presence of no other person than the minister's wife. Surely no inference or deduction could be made from that testimony that there was any intent on the part of the minister to cause insubordination, disloyalty, mutiny, and refusal of duty in the military and naval forces of the United States; to wilfully make and convey false reports and false statements with intent to interfere with the operation and success of the military and naval forces of the United States and to promote the success of its enemies; or to wilfully obstruct the recruiting and enlistment service of the United States to the injury of the service and of the United States. Mr. Kling is a man of mature years and not at all likely to be influenced by what the minister said. Such talk might have made his choler rise. The whole matter came up in the course of a conversation between them, with manifestly no intent on the part of Mr. Fontana to influence

anyone. He was simply expressing his opinions and arguing reasons for not heading the bond-buying list. However unpatriotic his views were and however much as we patriotic citizens may disagree with his sentiments, it certainly cannot be said that at the time, place, and under the circumstances of the conversation there was an intent to violate the Espionage act.

Nor is the allegation that he frequently prayed for the success of the armies of Germany over the armies of the United States borne out by the testimony. His prayers which were made along that line were made before we entered into the war with Germany, and were for the success of the German arms as against her then enemies.

The statement with regard to not wishing to subscribe for Liberty Loan bonds, if made, was in the conversation with Mr. Kling at the minister's home at the time I have referred to. He had a right to refuse to subscribe to Liberty Loan bonds, and the proof indicates that he is not a man of means. It was no crime to refuse to subscribe to the bonds.

The question in every case is whether the words used are used under such circumstances and are of such a nature to create a clear and present danger that they will bring about the substantiative evils that Congress has a right to prevent. It is a question of proximity and degree. There have been, unfortunately, several convictions in other places for violating this statute, but none of them were like the case now before you. In one the defendant conspired to have printed and circulated to men who had been called and accepted for military service a document intended to cause insubordination in the military and naval forces of the United States. The overt act was the distribution of the document set forth. But that is far different from the facts in this case. Much of what it is alleged Mr. Fontana said was in the quiet of his home in the presence of his wife and Mr. Kling, and he said he was not influenced. Nowhere is it shown that in a public place or to men who had been called and accepted for military service the minister said or made any of the statements

attributed to him in the indictment, except the allegation as to his prayers and the sermon he preached, which, I have shown, was not proved or that the quotation from his sermon was intended to influence the military and naval forces of the United States.

In the court decisions the term "wilfully" is defined as "intentionally," or "with the purpose of." Under all the facts and circumstances disclosed by the evidence in this case, how can it be said that he wilfully said and did the things alleged? How can the words used under the circumstances detailed in the evidence have the tendency to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent? The statements alleged can not, under the circumstances, time, and place of making them, be said to have been intended to violate any law. There is a manifest lack of criminal intent.

*Mr. Knauf.* Gentlemen of the jury: I am going to put before you the statements of the witnesses which the Government has brought to prove my client guilty of a violation of the Federal statute. You know what that statute is; it has been read to you several times. And when you carefully consider the evidence I am going to ask you to find that nothing that these witnesses have sworn to, even though it is all true and not contradicted by the defense, sustains the charge brought against him by the Government.

J. H. Kling, the first witness for the Government, testified to having known Mr. Fontana for eight or nine years at New Salem; that he is a minister of the gospel in the German Evangelical Church, and that New Salem had about 800 people; that he heard the defendant preach at different times on funeral occasions, but not since April 6, 1917. He said that during October, November, and December, 1917, there were advertisements of the United States Army and Navy posted at the post office, banks, and different places; that men from the ages of 18 to 21 and 31 subject to the act of May 18, 1918, resided there and that he was acquainted with all the young men there, and that they were all of draft age.

He testified that he had a conversation with defendant at defendant's house—himself, defendant, and defendant's wife (part of the time) being present and no other person. He desired the defendant, Fontana, to subscribe at the head of the Liberty Loan list. Fontana refused to do so. This was in the month of October, 1917. He said the defendant stated he did not want to use his influence to help out the present administration in the war, because of the fact that President Wilson was elected on the slogan "He kept us out of war," and that he had now forced the country into the war; that to use his influence in the sale of Liberty bonds would prolong the war. That he noticed a picture of the kaiser on the wall and the defendant said that he knew the kaiser to be a man of peace; that he had offered peace on several occasions; and inquired of Mr. Kling why they did not accept peace; and that he believed it would have been a humane act to sink the Lusitania because of the fact that there were munitions on board and the sinking saved a lot of lives in Germany, and that he would do the same thing and was proud of the fight the German people were making.

Now, in considering this testimony of Mr. Kling, you must remember that Mr. Kling and Mr. Fontana were alone in the minister's house, except during some portions of the talk when Mrs. Fontana was present. On cross-examination I asked him, "Did Mr. Fontana interfere in any way with your joining the army or navy of the United States or the aeroplane service of the United States? He answered, "Why, that subject did not enter into our conversation at all." Then when I said, "I ask you did he in any way prevent you?" he answered, "No." Now, is it not plain that even though the Rev. Fontana had made every utterance to Mr. Kling that he has alleged, he did no harm; he influenced Mr. Kling in no wise. Mr. Kling felt just as free to enter the army or navy service of the United States Government after his talk with Mr. Fontana as he ever did before. He was a widower, had one child, and has never shown any inclination not to join the army or navy service of the United States

Government in time of war. Therefore, even though every utterance was made as claimed, it shows itself only to be a debate between the two men as to whether or not Mr. Fontana should purchase bonds; and Kling himself says he was not influenced in any way against the United States Government in its war work. Therefore, even though all the language was used as Mr. Kling swore to, no harm has been done, no one influenced, and the minister has not interfered with the service of the United States Government in time of war; he has caused no mutiny or disloyalty by that talk and has not obstructed the enlistment or recruiting of the army or navy of the United States, which are the only charges against him.

Then, their next witness is Podoll, who says that in August—and remember, the charge is laid for December 19, 1917—Mr. Fontana, in church, said: "Just as the Lord was with His people, the children of Israel, and helped them to overcome their enemies, so he gave the German people ways and means to stand off their enemies of the world." When I asked him what he said in his prayer he answered that he prayed for both our land and the Fatherland, that peaceful relations might again be restored, and he made reference to our Congress, asking the blessings for our Congress and our Government in general; and, among other things that follow in the regular church prayers, asked a blessing for the community and crops. Then, when I asked him if anything Mr. Fontana said prevented him from volunteering, he said "No." . . .

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Schadel testified that he was in the church from April 8 to May 29, 1917, and heard the minister once pray for the old Fatherland and to give it victory over its foes and destroy and shatter all who wish it evil. But these statements were admitted by him to have been given prior to the passage of the act of June 15, 1917. To make that a crime which was said or done between the 6th day of April and the 29th of May would be making that fact or utterance which was not a crime before the act was passed a crime thereafter. In



other words, it would simply make an *ex post facto* law, which, in this country, is unconstitutional.

And each of these three witnesses stands alone, uncorroborated, in their separate attempted quotations of a phrase or a sentence of the minister's language used. They stand impeached by witness after witness.

Mrs. Dietz testified that in September, 1917, Mr. Fontana did not want to join the Red Cross; that he said, "No, I don't believe in it, because we are at war with Germany. They don't need our German money." This, she says, was made in her presence, but is not shown to have been said in the hearing of any other person or persons, and, surely, she was not influenced, for, she says, she was a member of the Red Cross, had been working for the Red Cross, and, even though he said these things to her, he could not thereby convey false reports or false statements with intent to interfere with the operation or the success of the military or naval forces of the United States or to promote the success of its enemies, nor could these statements have been construed so as to create a wilful attempt to cause, or cause, insubordination, disloyalty, mutiny, or refusal of duty, nor to have obstructed the recruiting or enlistment service of the United States. They were not said in the presence of any person capable of joining the United States army or navy for service therein or to become mutinous or disloyal therein. The testimony was wholly irrelevant; it relates to collateral issues and is offered for the purpose of prejudicing the jury.

Surely it was not criminal for Mr. Fontana to refuse to join the Red Cross. Whatever his reasons, he was not required by any law to join this humane organization, and if every man who has refused to join it is to be arrested for refusing and sent to jail, we will very soon be obliged to sell bonds to build jails instead of whipping the Hun. And what matters it though he did not buy bonds, when his salary was \$1000 per annum and himself, a wife, and five children to support?

Then we have Miss Otto, who was a reporter on a paper in

New Salem. Her testimony is scarcely worthy of consideration. It does not tend to show that, even though Mr. Fontana had said, "God specially blessed the German people, because they have these submarines as a means of warfare," he wished to express more than an opinion. Even if this statement were made in the course of a sermon running over 40 or 45 minutes, quoted simply by itself, a phrase or a sentence in the whole sermon, maybe, could not violate either of the subdivisions of the Espionage act. But take her testimony as a whole and she does not show that there was a single person there at the time bearing the qualifications necessary for joining the army or navy. And her cross-examination, following, shows conclusively that she did not know of a single person having been influenced. In the indictment the defendant is charged in three different counts, upon several different charges in each count, and as having committed them on or about December 19, 1917; while the witnesses each testified to sayings at times many months distant from the date laid in the indictment. For instance, Kling, that on October 24, 1917, he refused to buy bonds; Dietz, that on September 17, 1917, he didn't want to join the Red Cross; Podoll, that in August, 1917, he gave his opinion that God had given Germany a weapon to ward off its enemies; Schedel, that in April and May, 1917, he had prayed that the enemies of the Fatherland be shattered; Mrs. Wainwright, that she had not heard him ask for the singing of patriotic songs.

What Podoll and Miss Otto testified to was but a fragmentary portion of an unusually long sermon and was but the expression of an opinion or, perchance, an illustration of a point he wished to bring home on the topics to impress upon the minds of his hearers that "God had given the Christians a weapon by which he could ward against all sin—the prayer." Suppose he did say, "Just as the Lord was with his people, the children of Israel, and helped them to overcome their enemies, so he gave the German people ways and means to stand off their enemies of the world." It was merely an opinion

at the most. In many honest but possibly misguided minds, there existed the same belief and opinion. If we believe biblical history, then surely we must believe that the battles of the Israelites have been God's battles and God to have been with them. Many men believed with that eminent professor lecturing for our Government, that "God is with the mightiest army and therefore was with the German army until the United States with her 100,000,000 people and 10,000,000 soldier boys took her stand;" and, if so, was the statement an untruth? Surely, up to our getting our men into the trenches the Germans actually had weapons that had enabled them to stand off their enemies. Now, suppose he had said the very language Miss Otto guessed at, was it more than his opinion and had Germany not had these same submarines and had they not been the means of great assistance to them? Whether God or the Devil gave them the design and force to carry them in effect, we know not, and the opinion of our greatest thinkers seem to disagree. Did it not seem that everything the Central Powers directed was carried out to the letter, while France and England were fighting alone on the western front? So when the language was used the minister was but expressing an opinion which seemed the truth to all of our people. There was no intent to hinder the service of our Government in its success or to cause, or attempt to cause, insubordination, disloyalty, or mutiny in our army or navy or cause obstruction in our army or navy enlistment or recruiting. No intent was discernible, no one was interfered with in their duty under the Espionage act. Therefore it is incumbent on the Government to show he intended to breach these various parts of this law. No such showing has been made and no such showing of intent has been given in evidence, except that Podoll tried to give his conclusion as to the minister feeling utter disgust and hatred toward some certain individuals.

The testimony wholly fails in force. Not a statement tends to establish the saying of a single thing to violate the law on December 19, 1917, which was the Red Cross day at New Salem, and on which day the defendant did deliver an ad-

dress to the Red Cross which brought the members of his congregation with their contributions to the help of the greatest of war works. Not one scintilla of evidence is offered that he then said a single thing to disparage our Government in any of its war activities; yet at the trial we are confronted with collateral issues covering a period of some 10 months and even after the finding of the indictment.

More than one of our witnesses would have testified that nothing they heard Mr. Fontana say influenced him in any way against the United States, the army, or the war; but the Court said that such evidence was not admissible. With all the male attendants of the church, qualified for the army or navy in court, we wished to show that none had been influenced by Mr. Fontana against the interest of the United States in its war with Germany and the Central Powers, but were not permitted to do so. Every male of proper age in this church was ready to testify that nothing said or done by Mr. Fontana had in any manner influenced him against the United States.

If every fit member of this church went into the army, then surely the defendant had not obstructed the enlistment or recruiting or service of the United States. For it was not contended that any of the utterances of the defendant had in any manner deterred the army and navy service in any other place than in this church. Surely, if he influenced no member of his church, he did not obstruct any enlistment or recruiting of the army or navy. If no member of his church refused army or navy duty service then he did not interfere with such service.

The intent must not only be averred but it must be proven by the facts themselves, not by the various conclusions. The inference and conclusions are for you to find from the language spoken, the things done and the manner used, and not from whether some witness concluded or inferred that he was "peevish or disgusted or full of hatred" towards certain individuals. Kling and Podoll say they were not affected. Schadel is a man of 65 and the other witnesses were women. The burden of the Government to prove the case has not

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been met. It is not met as to time, it is not met as to intent, it is not met as to sayings which could be held a violation of the statute. No intent to violate the law is presumed and cannot be assumed under the evidence you have listened to.

All through this trial we have been met with these innumerable side issues: "Did he buy Liberty Loan bonds? Did he subscribe to the Red Cross? Did he sympathize with Germany before we were in the war? Did he pray for the Fatherland before June 15, 1917? Did his church receive a present of a Bible from the kaiser before the war was declared? Did he have a picture of the kaiser?" All issues collateral to the charge in the indictment and all filled with prejudicial sentiment calculated to influence your mind to such an extent as to prevent you from giving a fair and impartial trial. And what has all the evidence about the constitution of the German state church got to do with the issues here? And Podoll told you "I noticed after the middle of July when I got back from my vacation, that that old feeling appeared to be entirely gone and America came first in the prayers, and then the Fatherland, and merely a petition that the peaceful relations might soon be restored; but never in the prayers did hear anything about the righteousness of the cause for which America was in the war nor any reference to the victory for our cause and our allies or anything to that effect."

Now this man is not on trial for something he did not say or do, and though this evidence was given in a highly dramatic manner, what has it to do with the charge?

We all know the deep prejudice which surrounds the case, it is in the very air, it pervades the whole country, every city, every town, every village is permeated with it. And it is especially strong in those parts of our land where there is a considerable German population. The hate of every German is manifested in the action of the citizens of Bismarck, our capital, painting out its name wherever it appears, in ministers of the Gospel denouncing persons who should dare to bring in verdicts of not guilty in disloyalty trials; in all our newspapers doing the same thing every day in the week. I

could easily find a jury of twelve men in this or any other State, who, if this indictment alleged that Mr. Fontana had caused the sinking of the William P. Frey, or had condemned Edith Cavell to be shot, would promptly find him guilty. But though every one of you gentlemen is a member of the Red Cross, not one of you perhaps but has one or more relatives fighting against Germany., I have confidence that you are far above letting this hate and prejudice follow you into the jury box, for I believe you intend to follow your oaths to give this man justice, without fear, favor or affection and to render a verdict according to law and not according to passion and prejudice.

*Mr. Hildreth.* Gentlemen: The testimony that the Government has introduced indicates three great facts in the career of this defendant. First, that he has been always for Germany, either in peace or in war. Second, that his religious teachings have been to strengthen the faith of the German alien in this country for the land of the Rhine, and not for the "land of the free and the home of the brave." Third, that he has discouraged the recruiting and enlistment service of the Government and has made it hard for the patriotic people of that community to carry on the activities of the war.

The prisoner is a minister of the gospel—engaged in cultivating not only the minds of his hearers but their souls. In so sacred a place, he had the greatest possible opportunities to wield under a Christian sermon a feeling of intense bitterness and hatred against the United States. He knew that this Government was associated with the Allies, of whom many of the witnesses have told you he spoke most bitterly either in prayer or in his sermons. Could he put away the feeling that he had for Germany and become a patriotic law-abiding minister, who was using his influence for the Government of the United States? The testimony of the witnesses has answered that question that this minister, instead of leading his flock in the activities of war measures such as we find throughout the United States in every village, every town and every city, priest, rabbi, and minister, all engaged in Red Cross

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work—was not ready to join the Red Cross because he had heard that the American Red Cross would not help Germans or Austrians who fell within the lines of the Allies.

A dangerous man in any activity of life will cause men to hesitate to associate with him and do with him, but a dangerous minister of the gospel exercises an influence far beyond the surface in the ordinary affairs of life. He is dealing with human souls. He is looked upon as "Father Fontana" in the community.

He led those people along that beaten path of Germanism. The evidence discloses that he was forceful in his pulpit and eloquent in his denunciation of the activities of the Government in this war. Search in vain for one who would do greater harm to the cause of the United States in this war, and you will find no one who will equal the minister of the gospel. He preached in a German settlement. His language was German and the song upon the lips of himself and his wife was German. His prayer to the God of battles was in German. His whole conduct has been in harmony with the land of his birth. Secretly he has carried on his work in the night time, and on Sunday mornings prayed for the success of German arms.

The counsel on the other side have argued to you that so strong is the prejudice in the city against anything German that if the Rev. Fontana was charged in a court here with causing the death of Nurse Cavell, a jury would find him guilty of that. Does he think, gentlemen, that when the evidence you have listened to so overwhelmingly points to the conduct of this man, to his pro-Germanism, to his German prayers and his German sermons to the people of New Salem, his guilt can be glossed over by any such language. And the best proof of the powerful influence he exercised in his church and over his flock is seen in the fact that immediately after proceedings were instituted against him, activities commenced to be aroused, service flags were put up, Red Cross work was begun.

He gives as a reason why he had not joined the Red Cross that he had read in some paper that Mr. Davidson, its head,

had said something not very nice about the Germans. But he made no effort to find out whether this newspaper statement was true. Instead he refused to join the Red Cross until he was being prosecuted, because of the so-called rumor that Mr. Davidson had made statements that the Red Cross would pay no attention to the wounded Germans and Austrians; a statement about an organization, as we all know, recognized by the Geneva conference and by the whole civilized world, as an institution for the alleviation of the horrors of war. It did not take much to bend the mind of the defendant to predicating a reason for failure to join the Red Cross—that it was not an impartial institution between the wounded of all armies.

Note, gentlemen, the evidence with reference to the Red Cross; his statements to the various witnesses; his conduct with reference to subscriptions; and then note his activities after the Government had placed its hand upon him. Then he raises the flag in the pulpit; then he has something to say to the people who are going to war. When he met the law, his career changed. But when he had the freedom of his church and the control of his pulpit, he was a follower of the kaiser, and hung his picture upon his walls. There was no room for Washington's or Lincoln's or the great statesmen and fathers of our freedom.

He went upon the stand and told his story about his sermons and his prayers. He claimed to be a loyal naturalized citizen. The testimony of his neighbors and those who came in contact with him prove that he was disloyal, and that he was using his powerful position, under the guise of teaching Christianity, against the institutions of the country that he had sworn to protect in peace and in war.

He was opposed to the war; he preached and prayed in a manner that indicated that he was against this country. His flippant manner upon the witness stand was so noticeable that as you recall, his answers to the various questions you will be impressed, I think, with the attempt on his part to build up a false defense.

He says he preached a sermon for salvation. Ah, gentle-



men of the jury, it was for the salvation of the German people in this war. Every activity in their church has been, not an effort to save souls, but to save Germany. Therefore, the statements made to Mr. Kling, his activities before the war in which we are engaged, reflect upon his activities since the war. What minister of the gospel who loves God and his country can justify the sinking of the Lusitania, as the gurgling seas shrouded and snuffed out the lives of thousands of women and children and the hissing submarine went upon its deadly path. The defenders of Germany rejoiced when this defendant said that it was a noble fight that the Germans were making, and that the sinking of the Lusitania was a justifiable act of war.

The conduct of this preacher, his activities in his town vicinity, even before the war, is competent proof as bearing upon the question as to whether he did or did not make the statements with the intent to violate the statute under which he was indicted.

In times of war the unbridled tongue is more dangerous than the arms of the enemy, more stealthy than the submarine or the aeroplane. Does not all history point to this truth? This Government is engaged in a war that is testing the strength of its institutions as they have never been tested. Regardless of party, religion, or other environment, all men and women are contributing their money and labor, while across the seas the best blood of the land is being shed, to accomplish the one great purpose—the defeat of German autocracy. But here in the United States that same government has to fight a battle. Scattered everywhere throughout the land are the churches of Germans. Not that all are disloyal, but many were made disloyal. Not that the sons of many did not go to war, but that the sons of many might be made luke warm, weak and vacillating in the support of the government by the acts of such men as this man.

To meet that public danger the act of June 15, 1917, was passed. The prisoner was charged with his duties under the law. He was not an alien; he had been admitted to full citizenship; he had taken a solemn oath to bear true allegiance

to this government, and that meant a service higher in times of war than in times of peace. But he broke his oath. As a good American citizen, instead of teaching his flock the way to a better and higher life and loyalty to his adopted country, he was engaged in the business of leading them away from the thoughts of America and towards the Rhine. When we remember that 90 per cent of the community where this minister preached were Germans, what more powerful influence could be exercised, under all the circumstances, when such a minister justified as he did the sinking of the *Lusitania*.

The proof is abundant that he made these disloyal statements wilfully and designedly, and I ask you by your verdict to sustain my contention and the honest statements of the loyal men who have appeared before you as witnesses for the United States.

He denies on his examination many, if not all, of the statements to which these witnesses had testified. His character and standing as a minister of the gospel, and as a witness will be weighed in the balance by you, and will, I am assured, be found wanting.

Let your verdict speak the truth in this cause, and may the enemies of the government who are fighting us here in this land, be as surely defeated by the force of the law as the enemies of Germany will be defeated by the Allied soldiers.

#### THE INSTRUCTIONS TO THE JURY.

*August 1.*

JUDGE AMIDON. Gentlemen of the jury: If the defendant has used the language charged in the indictment with the purpose of violating the law, he ought to be found guilty. If he has not done so, he ought to be found innocent. You will perform your duty to your country by deciding without passion, upon a calm, fair, and impartial weighing of the evidence, whether or not the defendant has used the language charged in the indictment with the intent there charged. It will be necessary for you, gentlemen, in performing your duty as jurymen to pay heed to some things that there has not been the slightest heed paid to in the argument of the case. I have tried from time to time, as the case has progressed to fix your mind upon distinctions which you must keep before you if you are to decide the case under the law. Those distinctions ought to have been kept carefully in mind in the argument of the case. But they have not been.

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The first broad distinction which separates the evidence in this case is this: First, what is the defendant charged with in the indictment? He has committed the crime, if he has committed it at all, by the use of certain language. That language is repeated in each of the three counts of the indictment. Did he use that language? If he did not, that ends the case, and it is your duty to find him not guilty. But if he did use it, or use language substantially the same as that charged in the indictment, with the intent and purpose charged in the indictment, then he is guilty. But there is a vast volume of evidence that has been received here in the case which was received solely for the purpose of being weighed by you in determining the intent with which the defendant used the language charged in the indictment, if you find that he used that language. But all that evidence cannot be used for any other purpose, and if you do use it for any other purpose, you violate your duty as jurymen.

Then there is another distinction that runs like a ploughshare through this case, namely, the date when the law which the defendant is charged with violating took effect. That date is June 15, 1917. Anything that he did, anything that he said prior to that date, cannot be made the basis of a verdict of guilty here. It may be looked to for the purpose of determining the intent with which the defendant used the language charged in the indictment, but it cannot be made the basis of a criminal charge. Why? Because the Federal Constitution provides that Congress shall not pass any *ex post facto* law. What does that mean? That Congress shall not pass a law which shall make acts committed by the defendant prior to the passage of the law, a crime. Congress never intended by this statute that any man should be held to any criminal liability under it for anything that he did prior to the date when it was approved, namely, June 15, 1917. Now, what relevancy has that to this case? I can make you understand it, I think. Here is the witness Schadel. He came on the stand and testified that he heard the defendant utter a prayer on May 29. In that prayer he says he used this language: "I pray for our old Fatherland that you would give him victory over his foes and destroy and shatter all who wants his evil." The witness Schadel said that the defendant uttered that language in a prayer the last part of May. Can the defendant be held guilty of violating this law for uttering that prayer then? No. Why? Because the law itself was not passed until June 15, some fifteen days after the prayer was uttered. Nothing can be made a crime under a law that is said or done before the law is passed. Then why is that evidence here? Simply for such light as it may throw to you as indicative of the temper, and manner, and public speech of this man, as bearing upon the question of his intent in using the language with which he is charged in the indictment. It may be used for that purpose. It may not be used for any other purpose.

Now, gentlemen, first, what is the law that this defendant is charged with violating? Listen to it while I read it to you:

"Whoever, when the United States is at war, shall wilfully make or convey false reports, or false statements, with intent to interfere with the operation or success of the military or naval forces of the United States, or to promote the success of its enemies; and whoever, when the United States is at war, shall wilfully cause or attempt to cause insubordination, disloyalty, mutiny, or refusal of duty in the military or naval forces of the United States; or, whoever, when the United States is at war, shall wilfully obstruct the recruiting or enlistment service of the United States, to the injury of the service of the United States, shall be punished" as the law provides.

The thing that must strike your minds immediately upon hearing that law is that it relates to a restricted field, namely, the military and naval forces of the United States, and the recruiting and enlistment service. That is the whole circumference of that law. There are three clauses in it. Each clause creates a crime. There are three counts in the indictment. Each count charges a violation of one of those clauses by the use of certain language. The language in each count is identically the same, that is, the language that the defendant is charged with having used. The only difference in the counts is that the government charges in Count One that the language was used with an intent to violate the first clause of the section; in Count Two that the language was used with intent to violate clause two of the section; and in Count Three that the language was used with intent to violate clause three of the section. Now, let me call your attention to those three clauses; then you will get the case before your mind.

Clause One, upon which the first count is based, is as follows: "Whoever, when the United States is at war, shall wilfully make or convey false reports, or false statements with intent to interfere with the operation or success of the military or naval forces of the United States, or to promote the success of its enemies." That is Clause One. Count One of the indictment charges the commission of the crime expressed in that clause.

Clause Two: "And whoever, when the United States is at war, shall wilfully cause or attempt to cause, insubordination, disloyalty, mutiny, or refusal of duty in the military or naval forces of the United States. That is Clause Two. Count Two of the indictment charges the commission of that crime.

Clause Three: "Or, whoever, when the United States is at war, shall wilfully obstruct the recruiting or enlistment service of the United States—". That is Clause Three. Count Three of the indictment charges that the language therein set forth was used for the purpose forbidden in this clause.

Gentlemen, the language used in the section is popular speech in the main. It is intended to have exactly the meaning in the statute which it would have had in common speech among men. You know

what disloyalty, mutiny, insubordination, or refusal of duty, mean. You know what obstructing the recruiting or enlistment service means. That language is not the language of art and refinement. It is taken from the common speech of our country, and is intended to have the meaning which applies to it as such. The term "military and naval forces of the United States," is a term which perhaps needs some explanation. The military and naval forces as used in this law, include men who have been inducted into the military service. There are numerous steps by which a man may be inducted into the service. First, it may be done by voluntary enlistment on the part of the men. You step out upon the streets here. You see the stern face of Uncle Sam looking at you from numerous pictures, and saying, "I want you!" That is a picturesque statement of the call of this Nation to its citizenry. "I want you!" It is addressed to every man between the ages of eighteen and forty-five years. Any man within those years may enlist. The country wants men between those ages to enlist, volunteer. Then there is another group of men, men who fall within the Conscription Law. The law required every male citizen of the United States between the ages of twenty-one and thirty-one to register on the 5th day of June, 1917. After he had registered there was an examination conducted to ascertain his age, and his health and fitness for the service. There was also an inquiry in regard to his vocation, his family, to determine the classification that he should receive. If he was in such health as to make him fit for the military service he was given a card and a classification, and the country from that time forward was issuing calls to those men, to come forward according to their classes, according to the needs of the country at the time. Now, all the steps, either voluntary enlistment, or of meeting the requirements of the Conscription Act, up to the time when a soldier is enrolled and subject to be called to the colors, is the recruiting and enlistment service of the government. After a soldier has been thus accepted and enrolled he is a part of the military and naval forces of the United States. That is as good a definition as I can give.

Now, what does it mean, gentlemen, to cause refusal of duty in the military and naval forces of the United States, or to obstruct the enlistment and recruiting service? It does not mean alone physical acts by which men shall be prevailed upon not to take the steps which their country requires them to take, or desires them to take. It does not mean, or is not confined to going out and carrying on a campaign from house to house to dissuade men from enlisting or from performing their duty under the conscription act. No. This country, at this time, is asking men to make sacrifices which no man can make unless he is stirred by the profoundest sentiments of patriotism. The United States does not want hirelings. It does not want in its army men who go reluctantly. It wants men to go under the inspiration of a lofty patriotism, and a high purpose. It depends upon that kind of a sentiment all up and down the land that the men who come within the field of its call may

answer bravely and cheerfully to the call of duty; and whoever dampens that spirit of patriotism, or cools that ardor, obstructs the enlistment and recruiting service, and may cause refusal of duty or even insubordination or disloyalty in the military or naval forces. That is what these terms mean, gentlemen.

It is not necessary for the government, in order to make out a violation of this law, to go into the community and find men who will testify that they were dissuaded by some act of the defendant, or some words of his, from performing their duty to their country under the law. That is not required. All that is required is that the defendant shall have used language which, taken in connection with the occasion upon which it was used, would naturally result in bringing about the things which the law says shall not be brought about. It is then for you to say when you weigh the evidence, consider the language, and the circumstances under which it was uttered, whether it in fact did have that effect or not. If you believe it did, then that part of the charge is proven. If you believe it did not, then that part of the charge is not made out.

It is said sometimes that every man is presumed to intend the natural consequences of his acts. That presumption is powerful in respect to men's actions. It is less strong with respect to his words, because the connection between words and results is not as intimate, as a rule, as the connection between acts and results. But a man may be said to intend the natural results of his words. It is not a presumption of law. It is simply a presumption of fact, stronger under some circumstances, and weaker under others; and you are to determine whether the defendant was actuated by the purpose charged in the indictment, not by metaphysics, but by weighing the evidence which is before you in the light of the probable results of human conduct.

Gentlemen, a man cannot violate this law by simply omitting to do something. This law requires that he do something which the law forbids. There has been a good deal of evidence in this case about what the defendant did not do, and that has been made an immense amount of in the argument of the case. For example, it is said he did not buy Liberty Bonds; he did not subscribe to the Red Cross, or support it; he did not put up a flag in his church; he did not sing patriotic songs, or cause them to be played in the church. Any of those omissions, gentlemen, are not crimes. The law does not compel a man to buy Liberty Bonds, or War Savings Stamps, or to support the Red Cross, or put up a flag, or to sing patriotic songs. No. Failure to do those things may be a failure to measure up to the standard of good citizenship. Failure to do many of them would be a failure to measure up to the standard of good citizenship, if a man was able to do that. But the law does not attempt to enforce that duty. It leaves it to be enforced by the public sentiment of the community. You cannot find this defendant guilty in this case at all upon some of those things that there has been so much made of in the argument, namely, that he failed to subscribe

for Liberty Bonds; that he failed to subscribe to the Red Cross; that he failed to put up a flag in his church; that the German language was spoken in his church; that he failed to have patriotic songs sung in the church. None of those things are crimes, though you may think they are unpatriotic. They are here in the case for one purpose and for one purpose only; they can be used for that, and for no other purpose, namely, to aid you to the extent that they do aid you, in determining, if you find the defendant used the language that he is charged with using in the indictment, whether he was actuated by the purpose mentioned in the law.

There is one other word in the statute that is repeated in every clause of it, to which you must give attention, namely, the word "wilfully." You must find, in order to find the defendant guilty, that he used the language charged in the indictment with the wilful purpose on his part to accomplish one of the things which the law forbids. That means that he was actuated by a deliberate purpose on his part to accomplish one or more of those results.

Now, gentlemen, let us turn to the indictment and look at the language which it is said the defendant used: "That President Wilson was a man who, after securing his election on the slogan, 'kept us out of war' turns squarely around and by the use of his high office of President whipped the members of Congress into line by threats of exposure of this one and that one and in this way secured the authority to enter into the war with Germany."

Now, gentlemen, you are to be guided by your remembrance of the evidence, and not by my memory. But I am going to take up these clauses of the language in the indictment and refer to the witnesses who say that the defendant used that language. My memory is that the witness, Kling, is the only witness who testifies that the defendant used that language, or language like that. That is the first clause in this part of the indictment. You will consider the occasion on which that statement was made, if you find that it was made. Of course, if you find that the defendant did not say substantially that, you just simply lay that language out of your consideration. It would not be proven. But if you believe that the defendant did use that language in the interview with Mr. Kling, then take into consideration who was present on the occasion, and answer under your oath whether the defendant, when he made that statement, was actuated by a wilful purpose either to cause mutiny, insubordination, disloyalty or wilful refusal of duty in the military and naval forces of the United States, or to obstruct the recruiting and enlistment service. If you say that he was not actuated by that purpose, then just file that language away. The charge is not proven. But if you find he did use it, and that he was actuated by the purpose charged, and that the language, when taken in connection with the occasion, naturally tended to produce that result, then that is one of the facts of the case which you may take into consideration in making up your verdict.

The next clause in the indictment is: "That he felt proud of the

noble fight the Germans were making in the war." As I remember the evidence, that language was used in the interview with Mr. Kling, and that possibly the same language was used on other occasions. Remember, as I said to you, that the government is not confined to proving the exact words. This duty which you are called upon to perform is not a duty that can be performed by parsing words. If the defendant used those words, or words substantially the same as those, then the charge is proven, that is, that feature of it is proven.

The next clause in the indictment is: "That the sinking of the Lusitania was justified." The only witness who testified that he ever heard the defendant make that statement is Mr. Kling. You will remember the occasion on which it was charged that it was uttered.

The fourth clause is: "And that there was no reason whatever for the United States taking up arms against Germany." So far as I remember the evidence, the only witness who testified that he heard the defendant use that language is Mr. Kling.

Fifth: "That he frequently and as a minister of the German Evangelical Church, prayed for the success of the armies of Germany over the armies of the United States." Did the defendant use that language, or language of that same meaning and substance, in his prayers? There is evidence here before you as to the character of the language used by the defendant in his prayer on several occasions. I cannot attempt to state them all to you. There was the language that was testified to by the witness, Schadel, but as that was used before the statute was passed, it is no part of the language charged in the indictment, and you cannot resort to that for the purpose of making out that charge. You can only go to that language for the purpose of considering the intent with which the defendant used the language which you find he did use, as it set forth in the indictment.

Sixth: "That he did not want to subscribe for Liberty Loan Bonds because it would tend to encourage the administration." As I remember the testimony, the only witness who testified to that was the witness Kling. It is possible, however, that there was language which he used of substantially that character to other witnesses. Of course, I leave the question wholly to you.

Seventh: "That the President was using the same methods of threats to force every bank within the United States to subscribe to Liberty Loan Bonds." The only witness who testified to that language is the witness Kling.

Eighth: "That the purchase of Liberty Loan Bonds would give the country more money to fight Germany and thus prolong the war." As I remember the evidence, the only witness who testified to the use of that language is the witness Kling.

Ninth: "That he desired the success of the enemies of the United States." That is general language. You will take into consideration the whole evidence as to the language which the defendant used



on various occasions. Did he use that language, or language to that effect; and in each case did he use the language which you find he did use, when you read and consider it in the light of the occasion upon which it was uttered, to accomplish one or more of the illegal purposes specified in the statute, namely, to cause mutiny, insubordination, disloyalty or refusal of duty in the military and naval forces of the United States, or to obstruct the recruiting and enlistment service of the United States, or to interfere with the operation or success of the military or naval forces of the United States, or to promote the success of its enemies.

Gentlemen, I have called your attention to this language in the indictment because it is your duty to take up the indictment, which you will have before you, examine the charge, clause by clause, then answer under your oath whether the defendant used that language or not, or language substantially the same as that specified in the indictment; and then consider the occasion upon which the language was used, and answer under your oaths whether the defendant used it with the willful purpose to accomplish one or more of the things specified in the law. If you find he did, if you find it proven beyond a reasonable doubt as I will explain that matter to you presently, you may then find the defendant guilty. But if you answer those questions in the negative, you will then find him not guilty; and you ought to confine yourself in searching for the charge that is made against the defendant, to what is set forth in the indictment. You may look to all the other acts, omissions and words used by the defendant, as to which evidence has been received, for the purpose of ascertaining the intent with which he used the language specified in the indictment, provided you find he used that language.

Gentlemen of the jury, the defendant is charged with a serious crime in this case. He does not have to prove his innocence; he is presumed to be innocent. The government is required to prove his guilt by evidence which convinces your mind beyond a reasonable doubt. Until evidence of this prohibitive force has been produced, the presumption of innocence is his ample and complete protection. Reasonable doubt is what the words fairly import. It means a doubt that is left in the mind after a careful, fearless and impartial weighing of the evidence. If after you have thus weighed the evidence, there is left in your mind a doubt as to the defendant's guilt, that doubt is a reasonable doubt, and you should acquit him. But if, after you have thus weighed the evidence you are convinced to a moral certainty that the defendant is guilty, then you ought to convict him. The rule as to reasonable doubt was never intended to be used by jurymen as a pretext for returning a verdict of not guilty in respect of a man as to whom they have no reasonable doubt of his guilt. It is a merciful rule of our law intended to make jurymen careful lest through haste or inadvertence they find an innocent man guilty.

Gentlemen, you are the sole and exclusive judges of all questions of fact. You have seen the witnesses upon the stand. You have

heard their evidence. You will judge of their credibility by their bias, or freedom from bias; by the consistency of one part of their evidence with another; and its consistency with other facts which you believe to be well established. You will also consider the interest of the witnesses, or their lack of interest; and in the light of such consideration as these you will weigh the evidence of the several witnesses and determine the weight which you think ought to be attached to their evidence. In determining the grave issues of this case, you will understand, I am sure, that the case is not to be determined by the number of witnesses upon one side or the other, of any controverted question, but it must be determined by the weight and credibility of the evidence. Gentlemen, you have taken an oath that you will decide this case according to the evidence and the law. You have the evidence before you now, and the law as declared to you by the Court. For the weighing of the evidence you are responsible. For the law and its correct declaration I am responsible. If I fall into error as to the law, my errors may be corrected by methods which the law prescribes. You are to accept the law as I declare it to you. From you I accept the facts as you find them. It is a case of grave responsibility not only to the country but to the defendant. Your country does not ask you to return a verdict of guilty simply because this defendant is charged with violating a law that is connected with the war. The law calls upon you to give him a fair, impartial trial, under the law and the evidence. Whatsoever is more or less than that is a violation of your duty. Your country asks no verdict of guilty from you in this case unless you believe that a verdict of guilty ought to be returned under the evidence and the law. But if you do believe, under the evidence and the law, that a verdict of guilty ought to be returned, then it is your duty to return such a verdict.

You may find the defendant guilty as to all three counts of the indictment, or you may find him not guilty as to all three counts of the indictment; or you may find him guilty as to one or more counts, and not guilty as to the other count or counts.

C Gentlemen, are there any exceptions or suggestions in regard to the charge?

*Mr. Knauf.* I think not, your Honor.

*Mr. Hildreth.* No, your Honor.

At 10:30 p. m. the jury returned to the courtroom.

*The Foreman.* If the Court please, we ask leave to ask of you the definition relative to the second count of the indictment, in regard to making false statements—"That at said time and place the said defendant, J. Fontana, did wilfully cause and attempt to cause insubordination, disloyalty, mutiny and refusal of duty in the military and naval forces of the United States." There is a contention in the minds of the jurors whether or not this language is intended to cover those who are actually in service only, or whether it also covers those who are registered but had not been inducted into the service.

The COURT. Gentlemen, that is an easy question to answer. As soon as a man offers himself for enlistment he is examined to ascertain whether he comes within the age of persons who are permitted by law to enlist. Then he is examined physically to see whether he is fit physically to become a soldier. If he is found to be within the age, and to be physically fit, he is then immediately enrolled, and as soon as he is enrolled, and becomes a part of the military and naval forces of the United States, he is immediately made subject to military law. If he fails to perform the steps from that time on necessary to train him and fit him for the place in the actual army at the front, he is violating military law, and can be held accountable to the military authorities. He is, therefore, a part of the military and naval forces of the United States, within the meaning of this law, as soon as he is accepted and enrolled. As you know,—we all know, there are numerous steps leading up to the final fitting of a man for actual fighting at the front. Our soldiers are sent to training camps, and are there trained, put through certain disciplinary steps. But as soon as he is accepted by the government and placed upon the roll, he becomes subject to military law, and is a part of the military and naval forces of the United States.

Now, in the case of those who do not volunteer, but who come within the conscription act, the first step for them to take was to register. There were some ten million youths between the ages of twenty-one and thirty-one, who on the 5th day of June went before the proper officers and registered. They were then at the proper time examined by physicians, and by questionnaires to determine their physical fitness for admission to the army. If they were accepted as coming within the provision of the law, and found physically fit, they were given a card indicating that they had been accepted, and that they had been placed in certain classes according to whether they were perhaps needed by their families, or whether they were needed for agricultural work, there being, if I remember correctly, four classes—First, Second, Third and Fourth. That placed those men subject to call, and the moment they were placed in that status, they were subject to military authority, for the call would come from the military authorities, and it was their duty to obey the call, and if they failed to do so they were subject to military law. Of course, there were numerous steps to get them ready to fight; but those were training steps; they were all the time in the military and naval forces of the United States after they had been accepted and given their card. Now, that defines what constitutes the military and naval forces. Of course, there were other people who belonged to that class. The regular army is always in that class, because they have, of course, been advanced to a further stage for readiness for actual fighting. But the line of demarcation is when the soldier has been accepted and there is nothing left to be done except for him to be called to the colors. He is then a part of the military and naval forces. Now, all the steps that lie on the either side of that line constitute a part of the enlistment and re-

recruiting service,—all the steps leading up to the stage where a man has nothing left to do except when the military authorities say “come,” and he must come and join the colors, all the steps that lie before that constitute a part of the enlistment and recruiting service. And you will remember, I am sure, that the first two clauses of the law deal with the military and naval forces of the United States. The last clause deals with the enlistment and recruiting service. The second clause of the act makes it a crime for any person when the United States is at war, to cause or attempt to cause insubordination, mutiny, disloyalty, or refusal of duty in military or naval forces. That is the second clause of the act. The third clause is, “Whoever when the United States is at war shall willfully obstruct the recruiting or enlistment service of the United States, to the injury of the service of the United States,” is guilty of a crime.

Have I answered your question?

*The Foreman.* We thoroughly understood the question for enlisted men. It was just whether or not the position of one who was registered and had not been called—we have one on the jury who is registered and has not been examined, but has his card—whether he might be a part of the enrolled service, or whether he must first be called, and have his examination, and put himself on the military roll.

*The Court.* As I said to you, the examination may be had either by questionnaire or by physical examination. When he gets his card he is enrolled and accepted.

*Mr. Hildreth.* Your Honor, I was going to suggest that he is not examined until he is called. Perhaps you made that clear.

*The Court.* If he answers the questionnaire, of course he is subject to a final examination when he gets to the military post and he is called to his colors and may be rejected there, although there has been a provisional examination either physically or by means of the questionnaire. The questionnaire deals with the question of his physical condition, and that answers the purpose, when he gets his card, so that there is nothing left for him to do but to go before the military authorities. To be sure they may reject him, although he has been previously accepted by the local board and given his card and told to come. When he gets down before the military authorities he is subjected to a more rigid examination, and they may send him home; but still he is under military law, and that is what makes him a part of the military and naval forces of the United States.

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## THE VERDICT AND SENTENCE.

The jury retired and in a short time returned into court with the following verdict: “We the jury find the defendant

guilty as charged in the indictment.—O. B. Johnson, Foreman.”

The verdict was entered by the COURT and the jury discharged.

August 5.

*Mr. Hildreth.* Your Honor, I move for judgment in this case.

A motion in arrest of judgment by the *Counsel for the Defense* was overruled by the COURT.

JUDGE AMIDON. What, if anything, have you to say at this time why the sentence should not be imposed? Have you anything, as counsel for Mr. Fontana, to present to the Court on that subject at this time?

*Mr. Knauf.* If the Court please: We do not feel that the defendant has been properly indicted, nor do we feel that the indictment has given him, or us, an opportunity to prepare for a trial of this action, especially under the circumstances under which trials in cases of this kind must be had; the strong sentiment that exists everywhere, the sentiment which floats from tongue to tongue as we walk down the streets of Bismarck, and other towns, just at this time, against a person who is charged with a crime of this nature. We believe that it is impossible, under such an indictment as we have been charged with here, to secure a fair trial, because, first, we are unable to prepare for a trial; we are met in a case of this kind with matters that are ranging from the first day of April, or the 6th day of April, down to and including the 27th day of February, 1918—almost a year. So that we feel that under the charges set out in the indictment we could not prepare for a fair trial in this case. We feel that we were not notified of the different charges, and of the different dates, and the different times at which we are alleged to have committed the crimes. We feel that it was impossible to secure a fair and impartial trial under such circumstances. Now, we feel that the defendant, not having that opportunity, could not go to trial safely upon the indictment. We feel that the demurrer to the indictment should have been sustained. We feel that the motion in arrest of judgment, or motion for a directed verdict upon each of the counts, should have been sustained. We feel that it was impossible for us, or for anyone, to properly prepare for a trial under an indictment such as we have been charged with, because when we came here to court counsel were permitted to go through almost the daily life of this defendant from the time of the commencement of the war between the United States and Germany, down to and including the 27th day of February, 1918, and in some instances after that. We do not feel that we have been

able to properly present the defense of Mr. Fontana in this case. We feel that the matter has not been properly presented, and we feel that he ought not to receive a sentence under the conviction under these different counts. Mr. Fontana has a family to support, on sparse means of livelihood, and with no property saved, and for that reason was unable to secure an additional amount of testimony which he might have had if he had had the means to secure it with. Then we feel that under the entire record of the case, under the admission of testimony upon divers other alleged crimes that he could not secure a fair trial. We feel that the fact they bring in here testimony that was prejudicial to the defendant, and wholly without the charges in the indictment, that he could not receive a fair trial. I do not believe at this time, if the Court please, that the defendant should be sentenced under the indictment and the verdict as given in this court and under this trial.

The COURT. Mr. Fontana, you were indicted by a Grand Jury of this District, charged with having used seditious language with intent to interfere with the military activities of the government. You have entered a plea of not guilty to the charge, and you have had a trial before a jury. The jury has returned a verdict finding you guilty upon each of the three counts of the indictment. What, if anything, have you to say at this time why the sentence of the court should not be imposed upon you?

Mr. Fontana. I am not guilty. I never had an intention to say or do anything against the United States. I believe that what I have said has at least been misunderstood, and misconstrued. My sympathies varied somewhat in favor of Germany before the United States entered the war; but since the United States entered the war I was first and last for the United States, and that means also for their Allies. I am a citizen of the United States for twenty years. My wife is born in this country. Her parents are born in this country. My children are born in this country. I want to raise them good citizens of the United States.

The COURT. How old were you, Mr. Fontana, when you came to the United States? Sixteen and one-half years. Where were you born? In Southern Germany. What year did you come to the United States? 1888. Where were you educated? Partly in Germany, partly in this country. I went through High school and had some preparation for entering a seminary in this country. Upon your coming to this country did you continue your education here? Yes, sir. In a Lutheran seminary in Afton, Minnesota, a theological school. Have you visited Europe since you came to America? No. Was graduated from the theological seminary in 1893, and began at once work as a minister in Ohio, in a German church. Then after

two years went to Webster, South Dakota. Is Webster a German community like New Salem? No, sir. There is a population there Scandinavian, and American, and German, but mine was the German church there, made up of the same kind of people as at New Salem. Went then to Norwich, Minnesota; had charge of a German church; then to Albany, Minnesota, in charge of a German church; came to Salem, North Dakota, nine years ago.

During all these times that you have been a German pastor you have used the German language in your service in the churches over which you have presided? Most of the time. Is it a part of the discipline of your church that the services shall be conducted in German? Each congregation recommends that itself, and some congregations have a stipulation that the services shall be in German regularly, because the people cannot get it in the English as well as in the German. The various churches you have presided over in that regard; have they all desired that their services be conducted in German? Yes, sir. And the Sunday school should be had in German? Yes, but we always used the English language partly in the Sunday school. But it is a part of the discipline of your church, is it, that at least a part of the services in the Sunday school shall be conducted in the German language? Just so much that the children get an understanding of the sermons and the religious instruction, so that the children can understand the German in the services, and sermons, as long as the old folks are living who cannot understand English.

Where did you become a citizen? Webster, South Dakota, in 1898. Do you remember the obligation, the oath that you then took, which was imposed on you? What was it? It was to renounce all obligation to any prince, king or potentate, of any state, especially Germany, and that I would uphold the constitution of the United States against any enemy, internal or external.

JUDGE AMIDON. Well, now, there is just one clause in that oath that may have slipped from your memory. It is at both ends of it. You renounced and abjured all allegiance to Germany—to Germany and to the Emperor of Germany, and you swore that you would bear true faith and allegiance to the United States. What did that mean? It meant that you would set about growing an American soul as quickly as you could, and put away your German soul. You received your final papers as a citizen in 1898. By the oath which you then took you renounced and abjured all allegiance to Germany, and to the Emperor of Germany, and swore that you would bear true faith and allegiance to the United States? What did that mean? That you would set about earnestly growing

an American soul, and put away your German soul. That is what your oath of allegiance meant. Have you done that? I do not think you have. You have cherished everything German, and stifled everything American. You have preached German, prayed German, read German, sung German. Every thought of your mind and every emotion of your heart through all these years has been German. Your body has been in America, but your life has been in Germany. If you were set down in Prussia today you would be in harmony with your environment. It would fit you just as a flower fits the leaf and stem of the plant on which it grows. You have influenced others who have been under your ministry to do the same thing. You said you would cease to cherish your German soul, and that you would begin to build up inside of you an American soul. That meant that you would begin the study of American life and history; that you would open your mind and heart to all of its influences; that you would try to understand its ideals and purposes, and love them; that you would try to build up inside of yourself a whole group of feelings for the United States the same as you felt towards the Fatherland when you left Germany.

There have been many Germans before me the last month. It has been an impressive part of the trial. They have lived in this country, like yourself, ten, twenty, thirty, forty years, and they had to give their evidence through an interpreter. And as I looked at them and tried as best I could to understand them, there was written all over every one of them, "Made in Germany." American life had not dimmed that mark in the least. It stood there as bright and fresh as the inscription upon a new coin. I do not blame you and these men alone. I blame myself; I blame my country. We urged you to come; we welcomed you; we gave you opportunity; we gave you land; we conferred upon you the diadem of American citizenship—and then we left you. We paid no attention to what you have been doing. And now the world war has thrown a searchlight upon our national life, and what have we discovered? We find all over these United States, in groups, little Germanies, little Italies, little Austrias, little

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Norways, little Russias. These foreign people have thrown a circle about themselves, and instead of keeping the oath they took, that they would try to grow American souls inside of them, they have studiously striven to exclude everything American, and to cherish everything foreign. A clever gentleman wrote a romance called "America, the Melting Pot." It appealed to our vanity, and through all these years we have been seeing romance instead of fact. That is the awful truth. The figure of my country stands beside you today. It says to me: "Do not blame this man alone. I am partly to blame. Punish him for his offense, but let him know that I see things in a new light, that a new era has come here. Punish him to teach him and the like of him, and all those who have been misled by him, and his like, that a change has come; that there must be an interpretation anew of the oath of allegiance. It has been in the past nothing but a formula of words. From this time on it must be translated into living characters incarnate in the life of every foreigner who has his dwelling place in our midst. If they have been cherishing foreign history, foreign ideals, foreign loyalty, it must be stopped, and they must begin at once, all over again, to cherish American thought, American history, American ideals."

That means something that is to be done in your daily life. It does not mean simply that you will not take up arms against the United States. It goes deeper far than that. It means that you will live for the United States, and that you will cherish and grow American souls inside of you. It means that you will take down from the walls of your homes the picture of the kaiser, and put up the picture of Washington; that you will take down the picture of Bismarck and hang up the picture of Lincoln. It means that you will begin to sing American songs; that you will begin earnestly to study American history; that you will begin to open your lives through every avenue to the influence of American life; it means that you begin first of all to learn English, the language of this country, so that there may be a door into your souls through which American life may enter. I am not so

simple as to entertain the idea that racial habits and qualities can be put aside by the will in a day, in a year, in a generation; but because that is difficult it is all the more reason why you should get about it, and quit cherishing a foreign life. If half the effort had been put forth in these foreign communities to build up an American life in the hearts of these foreign-born citizens, that has been put forth to perpetuate a foreign life, our situation would have been entirely different from what it is today. You have violated your oath of allegiance in this: That you have cherished foreign ideals and tried to make them everlasting. That is the basic wrong of these thousands of little islands of foreigners that have been formed through our whole limits, that instead of trying to remove the foreign life out of their souls, and to build up an American life in them, they have striven studiously from year to year, to stifle American life, and to make foreignness perpetual. That is disloyalty. And the object, one of the big objects of this serious proceeding in this court, and other like proceedings in other courts, is to give notice that that must be stopped. I have seen before my eyes another day of judgment. When we get through with this war, and civil liberty is made safe once more upon this earth, there is going to be a day of judgment in these United States. Foreign-born citizens and the institutions which have cherished foreignness, are going to be brought to the judgment bar of this Republic. That day of judgment looks more to me today like the Great Day of Judgment than anything I have thought of for many years. There is going to be a separation of the sheep from the goats. Every institution that has been engaged in this business of making foreignness perpetual in the United States will have to change or cease. That is going to cut deep, but it is coming. I recognize the right of foreign-born citizens to hear their religion, if they cannot understand it in English, spoken to them in the tongue that they can understand. If they have not acquired enough English to read, they are entitled to have a paper that shall speak to them the language that they can understand. I cannot go farther than that. And this is the capital thing that is going to be

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settled on that day of judgment, namely, that the right to those things is temporary, and it cannot be enjoyed by anybody who is not willing to regard it as temporary, and to set about earnestly making the time of that enjoyment as short as possible. That means a fundamental revision of these foreign churches. No freedom of the press will protect a perpetual foreign press in these United States. It won't protect any press or any church who, while it is trying to meet a temporary need, does not set itself earnestly about the business of making that temporary situation just as temporary as possible, and not making it, as has been true in the past, just as near perpetual as possible. Men who are not willing to do that will have to choose. If they prefer to cherish foreign ideals they will have to go to their own. If it is necessary we will cancel every certificate of citizenship in these United States. The Federal Government has power to deal with that subject, and it is going to deal with it. Nothing else than that surely can be possible. And the object of the sentence which I pronounce upon you today is not alone to punish you for the disloyalty of which you have been guilty but to serve notice upon you, and the like of you, and all the groups of people in this district who have been cherishing foreignness, that the end of that regime has come. It is a call to every one of you to set about earnestly the growing of an American soul inside of you.

The Court finds and adjudges that you are guilty under each count of the indictment, and as a punishment therefor it is further adjudged that you be imprisoned in the Federal Penitentiary at Leavenworth for the term of three years.

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